LA SEPT PART DES Reports Sr. Edw. Coke Chiualer, chiefe Iuſtice del Common Banke:

des diuers Reſolutions & Iudgements done ſur ſolemne arguments, & auec grand deliberation & conference des treſreuerend Iudges & Sages de la Ley, de caſes en ley queux ne fueront vnques reſolue ou adiudges par deuant: Et les raiſons & cauſes des dits Reſolutions & Iudgements.

Publies en le ſize Anñ del treſhaut & treſ-illuſtre IAQVES Roy Dengl. Fr. & Irel. & de Eſcoce le 42. Le fountaine de tout Pietie & Iuſtice, & la vie de la ley.

Frequentibus argumentis & collationibus latens veritas aperitur, cum ſub eiſdē verbis ſæpe lateat multiplex intellectus.

Veritas ſæpius agitata magis ſplendeſcit in lucem.

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DEO,
PATRIÆ,
TIBI.

Exta Commentariorum ſiue Relationum mearum parti vix extremã manum addideram (Lector candide) cum, quæ ſingulos exercuit Anglia Iudices, oborta eſt controuerſia, cuius certè ſimilis nunquam fuit ante hunc diem in aula Weſt. agitata: vnde etiã, dum eorum quæ audieram recens admodum memoria fuit, ea præcipuè (prout mos eſt ſemperq; apud me fuit) quæ ſummariè ex omnibus diſputationibus atque argumentis, plurimum ponderis ac momenti, ſiue authoritates ſiue rationes ad ſoluendam quæſtionem annotaſſem, in proprium ſolamen meum & iuuamen (infida enim eſt labiliſque memoria) priuatim literis mandaui. Nunquam autem iſta quouiſmodo in publicũ proditura putaui, quia (quod primum arbitror et præcipuũ quod ex Relationibus edendis percipi poteſt emolumentum) non veriſimile eſt hunc caſum de alijs in iudicando cognitionem informaturum: nam duo nobiliſſima ſimul & antiquiſſima regna, in vnam conflari monarchiam, vno in vtriſque florentiſſimo rege inuictiſſimoque monarcha dominante, hoc vſu infrequens, imo ſicut ipſe Phœnix vnicum & individuum eſt in ſpecie, cum quo comparari poteſt ſocium habens neminem. Tum demum cum tantum, quantum mei ſolius cauſa apud memet annotare volui, perfeciſſem, mandatum mihi fuit, vt de nouo (quod non minimi ſudoris erat & difficultatis) in vſum etiam publicum, recolligerem: Nam certè ſuccincta iſta & compendioſa annotandi methodus, quæ ſatis eſt in memoriam colligentis, qui omnia atque ſingula prout geſta fuerunt audierit & cognouerit, nequaquam ſane ſatis erit in eo ſcribendi genere, quod & in præſens & futurum ſeculum eſt duraturum, & quod Lectores etiam, qui per ſemetipſos nihil habet præter illud quod ex eo quod conſcriptum eſt addiſcant, eſt edocturum. Et ſicut vnda gignit vndam, ſic labor vnus alium tanquam gemellum aliquem videtur eſſe conſecutum: Nam cum hic quem dixi caſus, nouus eſſet & inauditus, animum idcirco induxi non inutile fore, ſi, cum & temet (candide Lector) in quantum poſſem erudirem, alijs item in ambiguarum quarundam, de terris & tenemẽ-

tis ſuis (in quibus adhuc graues admodum & inter ſe pugnãtes Iuriſ-peritorũ opiniones extiterunt) quæſtionũ ſolutione ſatisfacerẽ, alios nõnullos caſus vſu frequentiores, & dignitate inter cæteros nequaquam minores, nunquam antehac dilucidè ſatis iudicijs explicatos, in medium proferrem: ita vt iam ratum ſit quod iamdudum apud antiques in prouerbium abijt, Labor labori laborem addit.

Putaui ego, ex mea in Conciues meos charitate, cuiuſcunq; demũ conditionis religioniſue ſint, nauandam eſſe operã, vt non ſolum hanc ſeptimam Relationum mearum partem (cui colligendæ ac in lucem edendæ Deus in hiſce temporum auguſtijs, dum in grauioribus Reipublicæ negotijs verſatus ſum, vires dedit) omnibus ob oculos ponerẽ, ſed vt eoſdẽ etiam adhortarer & præmonerem in quodam non mediocris momenti caſu, qui ſingulos ita neceſſariò, eoq; modo ſpectat, vt, ſi quid in eo peccatum fuerit, in primo gradu ſit pœna de Præmunire, *in ſecundo læſæ Maieſtatis culpa, in quo tamen multi (dum Legẽ, vt mihi videtur, ignorant) temerè & incõſulto penè quotidiè delinquunt. Mihi certè confitendũ eſt, eo vſq; nunc tẽporis redactũ eſſe hoc ſeculũ, vt quiſq; pro ſe ſedulo in diſcribendis libellulis faciat,* viz. Quotidie plures, quotidie peius ſcribunt. *Et certo certius eſt ſi quiſquã hominum libros iſtos (quos ego vidi) nuperrimè cõſcriptos à Roma vel à Romaniſtis ad nos vſq; attulerit, aut eos legendo ſuffragijs patrocinatus fuerit, aut eos item alijs approbando (quod maxime apud authores in votis eſt) legẽdos dederit, in ſũmas, et turbulentiſſimas periculorũ tempeſtates incidat neceſſum eſt: nam primò cum in hunc modum peccarit pœnas dabit per* Præmunire (*quæ ſic ſe habent, adiudicari non eſſe in Regis protectione; eorum terras & bona omnia in Regis poteſtatem redigi; & corpora carceri perpetuo damnari:*) *& qui ſecundò deliquerit læſæ Maieſtatis graue ſupplicium incurret. Hi ſunt illi libri qui ſplendidos & imprimis religioſos præſeferunt titulos, hi illi ſunt qui conſcientijs hominum infirmitate laborantibus opem ferre ſe profitentur, hi ſunt illi denique qui miſeras & miſerandas peccatrices animas in optatum tranquillitatis & ſalutis portum adducere in ſe ſuſcipiunt; at mors in olla, quemadmodum plærumq; in Pharmacopolarum vaſculis videre eſt,* quorũ tituli pollicẽtur remedia, ſed pixides ipſæ venena continent. *Hiſce ego præmonitionibus vſus ſum è ſolicita eorum cura, qui præſtigias & impoſturas iſtas (quibus hi, quos tanto proſequuntur amore & reuerentia, in ſummum capitis periculum eos de improuiſo ducant) nondum cognõrunt. Iam vero, neque culices, qui quaſi titillando pungunt paulò, non penetrant, neque fucos iſtos qui ſuſurris tantis bombuliſque quos edunt maximis, aculeis autem, quibus carent agriùs, nuſquam loci belligerare ſolent, tantillum pertimeſco; imo inquam, vt eſt apud Poetam,*

Non metuo pulicis ſtimulos, fuciq; ſuſurros.

Nec

Lectori.

Nec pili quidem æstimo inuidum istum & maledicum, qui, quo fusius venena sua euomeret, libellum quendam, nescio an rudem an inconcinnum magis, sub titulo & nomine Pricket *in lucem protulit, dicatum, Optimo meo Domino & Socero Comiti: Excestr. & inscriptum*, Memoriale siue mandatum Iuratorũ in Assisis apud ciuitatem Nordouicam, 4. die August. 1606. *quem sanè contestor non solum me omnino insciente fuisse diuulgatum, sed (omissis etiam ipsis potissimis) ne vnam quidem sententiolam eo sensu & significatione, prout dicta erat, fuisse enarratam. Iam vero si catastrophen expectes, ecce (dum perpetuum in me dedecus & infamiam inurere conatus est) quam falsum eius eum habuit expectatio? Primo enim Lectores illi, iuris peritos dico, qui inter legendum, non solum graues & turpes errores & aenias opinionum absurditates, sed ipsas etiam voces artis turpiter in alienum sensum vsurpatas, & totum denique contextum longissime à Iuris-consultorum (de legibus enim agibatur) vsu & consuetudine remotissimum esse, animaduerterunt, continuo hoc in ore habuerunt*, Inimicus & iniquus homo superseminauit zizania in medio tritici. *Deinde alij quoque cordati & aqui Lectores, dum generis dicendi & phrasis leuitatem seriò perpenderunt, suapte sponte in eandem inciderunt opinionem: nam, cum eodem ferè tempore Cõmentarium quendam ipse diuulgarem, pro certo statuerunt, si ea animus fuisset dimulgandi, memetipsum voluisse, meo proprio nomine, nequaquam nomine* Pricket, *mea propria opera omnibus insticienda præbuisse: Idcirco quasi vna voce conclamauerunt omnes, Illud ipsum opus tum natura sua maximè nequam esse & pudendum, cum ab opifice scelerato & mendaci proficiscatur:*

Circumuertit enim vis & iniuria quemque,
Atque vnde exorta est, in eum plærunque reuertit.

In hisce sicut, in alijs meis Relationibus, hoc mihi præcipuè cura fuit, vt (quantum me penès erat) Obscuritatem, Ambiguitatem, Periclitationẽ, Nouitatem & Prolixitatem auersarer. 1. *Obscuritatem, qua sanè haud absimilis tenebrarum est, in quibus misere solis radijs viduos necesse est huc illuc, vltro citroque, vsquequaque deuiare.* 2. *Ambiguitatem, in qua non vt supra lucis inopia laboramus, sed varijs meatuũ anfractibus, & irremeabilibus dubitationum maandris ita distracti sumus, vt quid sequendum, quid fugiendũ sit, prorsus ignoremus.* 3. *Periclitationem, ne quicquam omnino in medium proferrem, quod quæstiones magis nouas & controuersias ad turbandũ, quàm tranquillitatem & concordiam ad stabiliandum hunc fluctuantem hominum statum procreet (non enim conuenit, vt huiusmodi Commentarij illud agant quod plerunque solent hyberni soles, qui densiores nebulas & fuliginosiores concitant, quam quas eiisdem radiorum viribus dispergere valeant) aut quod*

Lecto-

Lectori.

Lectorem meum vel in primaria errorū & dubitationis limina quoquo modo ducat. 4. Nouitatem, eò quòd id maximè laborandum arbitror, vt nouas quascunque interpretatiunculas & priuatas opiniones (quæ, si ad amussim nostrorum librorum & antiquorum exempla applicentur, nequaquam quadrant) periculosissimas, & studijs nostris indignissimas euitem: nam periculosum existimo quod bonorum virorum non comprobatur exemplo. *5. Prolixitatem, cum in Relationibus hoc imprimis sit optandum, vt sint adeo compendiariò breues, prout necessitas resque ipsa ferre potest, sicut enim* languor prolixus grauat medicum, ita Relatio prolixa grauat lectorem.

Quòd casus ille de Postnatis reliquis est prolixior, confitendum est, at vero tres, quæ fusiorem me fecerunt in eo renuntiando, causæ graniores accesserunt. 1. Quòd in Camera Scaccarij casus erat discussus, ad quē quidem discutiendū omnes Angliæ Iudices (quemadmodū leges cōsuetudines postulāt) sigillatim, apertè, & copiosè sunt argumentati. 2. Quia non alius fuit vspiam casus in Camera Scaccarij, quod quispiam nunc temporis virorum cogitatione possit assequi, quem tot insimul Iudices tamque elaboratè, pertractarunt: non enim Dominus Cancellarius solum, sed alij etiam quatuordecim Iudices in eodem casu vires suas & ingenia limatè exercuerūt. 3. Quia tanta fuit varietas atque copia tàm materiæ rationum & argumentorū ponderibus librata, quàm forma multis excellentium ingeniorum, mirabilumq; artium ornamentis decorata, vt breuiter & succinctè magis referri non posse videbatur.

Nunc demum, hoc vlterius tantum votis amplector meis; Primum vt studiosus Lector quantum ego quidem (si non meum me deluserit iudicium) in componendis & formandis, tantam ille itidem reuera in legendis hisce Relationibus vtilitatem simul & voluptatem excerpat; Deinde vt quoad eius fieri possit, quam plurima legibus ipsis definiantur, quam paucissima vero Iudicis arbitrio relinquantur.

DEO,

PATRIÆ,

TIBI.

I Had no ſooner (good Reader) made an end of the ſixt part of my Commentaries or Reports, but the greateſt caſe that euer was argued in the Hall of Weſtminſter began to come in queſtion, and afterwards was argued by all the Iudges of England. This great caſe (for that memorie is *infida & labilis*) whiles the matter was recent & freſh in minde, and almoſt yet ſounding in the eare, I ſet downe in writing, out of my ſhort obſeruations which I had taken of the effect of euery argument, (as my manner is, and euer hath beene) a ſummarie memoriall of the principall authorities and reaſons of the reſolutions of that caſe, for mine own priuate ſollace and inſtruction. I neuer thought to haue publiſhed the ſame, for that it was not like to giue any direction in like caſes that might happen, (the chiefeſt end of publiſhing Reports) it is of his owne nature ſo like the Phœnix, and ſo ſingular and rare in accident, as the vnion of two famous and auncient kingdomes in ligeance and obedience vnder one great and mightie Monarch. Now when I had ended it for my priuat, I was by commandement to beginne againe (a matter of no ſmall labour and difficultie) for the publike. For certainely, that ſuccinct method and collection that will ſerue for the priuat memoriall or repertory, eſpecilly of him that knew & heard all, wil nothing become a publique Report for the preſent & all poſterity, or be ſufficient to inſtruct thoſe readers, who of themſelues know nothing, but muſt be inſtructed by the report onely in the right rule and reaſon of the caſe in queſtion. And as *vnda gignit vndam*, ſo commonly one labour cometh not alone: this brought on another with it, for ſeeing this caſe was of ſo rare a quality, I thought good as well for mine inſtruction and vſe (good Reader) as for the repoſe & quiet of many, in reſoluing of queſtions and doubts (wherein there hath beene great diuerſitie of opinions) concerning their eſtates and poſſeſſions, to publiſh

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ſome others that are common in accident, weightie in conſequent, and yet neuer reſolued or adiudged before: So as it is now verified in this, that which hath been ſaid of old, *Labor laboris laborem addit.*

With this ſeauenth worke or part of my Reports (whereunto Almightie God of his goodneſſe, hath in this ſhort time, amongſt many other publik imployments, enabled me) I haue out of my loue vnto all my deare countrie men, of what perſwaſion in religion ſoeuer they be, thought good to giue them all a caueat or forewarning in a caſe of great importance, that deepely and dangerouſly concernes them all in ſo high a point, that in the firſt degree it is a *Premunire*, and in the ſecond high treaſon. And yet many men, without all feare (by reaſon I thinke they know not the law) runne into the danger thereof almoſt euery day. I muſt confeſſe, that this is a writing or a ſcribling world, *quotidiè plures, quotid è pejus ſcribunt.* And ſure I am that no man can either bring ouer thoſe bookes of late written (which I haue ſeene) from Rome or Romaniſts, or read them, and iuſtifie them, or deliuer them ouer to any other with a liking and allowance of the ſame (as the authors end and deſire is they ſhould) but they runne into deſperate dangers and downefals; for the firſt offence is a *Præmunire*, which is to be adiudged to be out of the Kings protection, to loſe all their lands and goods, and to ſuffer perpetuall impriſonment; and they that offend the ſecond time therein, incurre the heauy danger of high Treaſon. Theſe bookes haue glorious and goodly titles, which promiſe directions for the conſcience, & remedies for the ſoule, but there is *mors in olla:* They are like to Apothecaries boxes, *quorum tituli pollicentur remedia, ſed pixides ipſa venena continent*, whoſe titles promiſe remedies, but the boxes themſelues containe poyſon. This fore-warning I giue out of conſcience & care of their ſafetie, that blindfold might fall into ſo great danger by their meanes whom they ſo much reuerence. I am not affraid of gnats that can pricke and cannot hurt, nor of drones that keep a buzzing, and would but cannot ſting.

Non metuo pulicis ſtimulos fucique ſuſurros.

And little doe I eſteeme an vncharitable and malitious practiſe in publiſhing of an erronious and ill ſpelled Pamphlet, vnder the name *Pritket*, and dedicating it to my ſingular good Lord and father in law, the Earle of Exceſter, as a Charge giuen at the Aſſiſes holden at the citie of Norwich, 4. *Auguſti*, 1606. which I proteſt was not onely publiſhed without my priuitie, but (beſides the omiſſion of diuers

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principall matters) that there is no one period therein expreſſed in that ſort & ſenſe that I deliuered it: wherein it is worthy of obſeruation how their expectation (of ſcandalizing me) was wholly deceiued, for behold the cataſtrophe! Such of the readers as were learned in the laws, finding not onely groſſe errours and abſurdities in law, but palpable miſtakings in the very words of art, and the whole contexture of that rude and ragged ſtile, wholly diſſonant (the ſubiect being legall) from a lawyers dialect, concluded, that *inimicus & iniquus homo ſuper ſeminauit zizania in medio tritici*: the other diſcreet and indifferent readers, out of ſence and reaſon, found out the ſame concluſion, both in reſpect of the vanitie of the phraſe, and for that, I publiſhing about the ſame time one of my Commentaries, would, if I had intended the publication of any ſuch matter, haue done it my ſelfe, and not to haue ſuffered any of my works to paſſe vnder the name of *Pricket*, and ſo *vna voce conclamauerunt omnes*, that it was a ſhamefull and ſhameleſſe practiſe, and the author thereof, to be a wicked and malitious falſarie.

Circumuertit enim vis & iniuria quemq;
Atq; vnde exorta eſt, ad eum plerumq; reuertit.

In theſe and the reſt of my Reports, I haue (as much as I could) auoided obſcuritie, ambiguitie, ieoperdie, noueltie, and prolixitie: 1. Obſcuritie, for that is like vnto darkeneſſe, wherein a man, for want of light, can hardly with all his induſtrie diſcerne any way. 2. Ambiguitie, where there is light enough, but there bee ſo many winding and intricat wayes, as a man, for want of direction, ſhall bee much perplexed and intangled, to finde out the right way. 3. Ieoperdie, either in publiſhing of any thing that might rather ſtirre vp ſuits and controuerſies in this troubleſome world, than ſtabliſh quietneſſe and repoſe betweene man and man (for a Commentarie ſhould not be like vnto the Winterly ſunne, that raiſeth vp greater and thicker miſts and fogges, than it is able to diſperſe) or in bringing the reader, by any meanes, into the leaſt queſtion of perill or danger at all. 4. Noueltie, for I haue euer holden all new or priuate interpretations, or opinions, which haue no ground or warrant out of the reaſon or rule of our bookes, or former preſidents, tobee daungerous, and not worthy of any obſeruation: for *periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo*. 5. Prolixitie, for a report ought to bee no longer than the matter requireth, and as *Languor prolixus grauat medicum, ita relatio prolixa grauat lectorem*. The caſe of *Poſtnati*, I confeſſe, is longer than

than any of the reſt, and that for three cauſes: Firſt, for that it was an Exchequer chamber caſe, for deciding whereof all the Iudges of England (as the law doth require) did argue openly and at large. Secondly, for that neuer any caſe within mans memorie, was argued by ſo many Iudges in the Exchequer chamber, as this was, there hauing argued the Lord Chancellor and fourteene Iudges. Thirdly, for the varietie as well of the important matter, as of the ſeuerall kinds of excellent learning and knowledge, deliuered in the arguments of this caſe. Finally, with theſe wiſhes & deſires I conclude. Firſt, that the ſtudious Reader might indeed receiue as great profit and delight in reading this worke, as I did (vnleſſe mine owne iudgement deceiue me) in compoſing and framing thereof: Secondly, that *quoad eius fieri poſſit, quam plurima legibus ipſis definiantur, quam pauciſſima vero Iudicis arbitrio relinquantur.*

Poſtnati.

Caluins caſe, Trin. 6. Iacobi Regis.

IAcobus Dei grat' Angl', Scotiæ, Franc', & Hiberniæ Rex, fidei defenſor, &c. Vic' Midd' Salut'. Queſtus eſt nobis Robertus Caluyn gener', quòd Richardus Smith & Nicholaus Smith iniuſtè & ſine iudicio diſſeiſ. eum de libero tenemento ſuo in Haggard, aliàs Haggerſton, aliás Aggerſton, in paroch' Sancti Leonardi in Shorditch infra triginta annos iam vltim̃ elapſos. Et ideo tibi p̃cipimus quòd ſi p̃dict' Robert' fecerit te ſecurum de clameo ſuo proſ. tunc fac' tenem̃tum ill' reſeiſ. de catallis quæ in ipſo capt' fuerint, & ipſum tenem̃tum cum catallis eſſe in pacè vſque diem Iouis proxim̃ poſt quindeñ Sancti Martini proxim̃ futur'. Et interim fac' xij. liber' & legal' homines de viſn̄ illo videre tenement' ill', & nomina eorum imbr̃. Et ſumm̃ eos p̃ bonos ſumm̃ quòd tunc ſint coram nobis vbicunque tunc fuerimus in Angl' parat' inde facere recognit'. Et pone per vad' & ſaluos pleg' p̃dictos Richardum & Nicholaum, vel balliuos ſuos ſi ipſi inuent' non fuerint, quod tunc ſint ibi aud' ill' recognit'. Et habeas ibi ſumm̃, nomina pleg', & hoc breue. T. me ipſo apud Weſtm̃ tertio die Nouembris, Anno regni noſtri Angl', Franc', & Hiberñ quinto, & Scotiæ quadrageſimo primo.

Pro quadragint' ſolid' ſolut' in Hanaperio.

Kindeſley.

Aſſiſa veñ recogñ ſi Richardus Smith & Nicholaus Smith iniuſtè & ſine iudicio diſſeiſ. Robertum Caluyn gener' de libero teñto ſuo in *Midd.*

in Haggard, aliàs Haggerſton, aliàs Aggerſton, in parochia Sancti Leonardi in Shoreditch, infra triginta annos iam vltimos elapſos: Et vnde idem Robert', qui infra ætatem vigint' & vnius annoꝝ exiſtit, p Iohannem Parkinſon & Willihelm̃ Parkinſon gardianos ſuos, q̃ Cur̃ dñi Regis hic ad hoc coniunctim & diuiſim ſpecialiter admiſſ. queritur q̃ diſſeiſ. eum de vno meſſ. cum pertin̄, &c. Et p̃dicti Richardus & Nicholaus per Willihelm̃ Edwards Attornat' ſuum ven̄, & dicunt q̃ prædictus Robertus ad br̃e ſuum prædictum reſpõderi non debet, quia dicũt, quod prædictus Robertus eſt Alienigen̄ natus quinto die Nouembris, anno regni dñi regis nunc Angliæ, Franciæ, & Hyberniæ tertio, & Scotiæ triceſſimo nono, apud Edenborough infra regnum ſuum Scotiæ p̃d', ac infra ligeanc' dicti dñi Regis dicti regni ſui Scotiæ, ac extra ligeanc' dicti Domini Regis regni ſui Angliæ. Quodque tempore natiuitatis p̃dicti Roberti Caluyn, ac diu antea & continue poſtea prædictũ regnũ Scotiæ, per iura, leges, & ſtatuta eiuſdem regni propria, & non per iura, leges, vel ſtatuta huius regni Angliæ, regulat' & gubernat' fuit & adhuc eſt. Et hoc parat' ſunt verificare, vnde pet' iudicium ſi prædictus Robertus ad breue ſuum p̃dictum reſponderi debeat, &c. Et prædict' Robertus Caluyn dicit, Quod prædictum placitum per prædictos Richardum & Nicholaum ſuperius placitat' minus ſufficiens in lege exiſtit ad ipſum Robertum a reſponſ. ad breue ſuum prædictum habend' repellend', quodque ipſe idem Robertus ad placit' ill' modo & forma prædict' placitat' neceſſe non habet, nec per legem terræ tenet' reſpondere. Et hoc parat' eſt verificare, vnde petit iudicium: Et quod prædicti Richardus & Nicholaus ad prædictum breue ipſius Roberti reſpondeant. Et prædicti Richardus & Nicholaus, ex quo ipſi ſufficien̄ materiam in lege ad ipſum Robertum à reſponſ. ad breue prædictum habend', repellend' ſuperius allegauer̄ quam ipſi parat' ſunt verificare, Quam quidem materiam prædictus Robertus non dedic', nec ad eam aliqualiter reſpondet, ſed verificat' ill' penitus admittere omnino recuſat', vt priùs pet' iudicium ſi prædictus Robertus ad breue ſuum prædictum reſponderi debeat, &c. Et quia cur̃ domini Regis hic de iudicio ſuo de & ſuper præmiſſ. rẽddendo nondum aduiſatur, dies inde dat' eſt partib' prædictis coram Domino Rege apud Weſtmonaſter̄, vſque diem Lunæ, proxim̃ poſt octab' Sancti Hillarij de iuditio ſuo inde audiendo, eo quod Curia Domini Regis hic inde nondum, &c. Et aſſiſa prædicta remañ capiend' coram eodem Domino Rege vſque eundem diem Lunæ, ibidem, &c. Et vicecom̃ diſtring' recogn̄ Aſſiſæ prædictæ. Et interim fac' viſum, &c. Ad quem diem coram Domino Rege apud Weſtmonaſter̄ ven̄ tam prædict' Robertus Caluyn per Gardianos ſuos prædictos, quam prædicti Richardus Smyth, & Nicholaus Smyth, per Attornatum ſuum prædictum. Et, quia Cur̃ Domini Regis hic de iudicio

dicio ſuo inde & ſuper præmiſſis reddendo nondum aduiſatur, dies inde dat'eſt partibus prædictis coram domino Rege apud Weſtm̃ vſque diem Lunæ proxim̃ poſt Craſtinũ aſcenſionis domini de iudicio ſuo inde audiend', eo quod cur̃ domini regis hic inde nondum, &c. Et aſſiſa prædicta remañ vlterius capiend' vſque eundem diẽ Lunæ ibidẽ, &c. Et vicecom̃ ſicut alias diſtring' recogñ aſſiſæ p̃d', & interim fac' viſum &c. Ad quem diem coram domino Rege apud Weſtm̃ veñ tam prædictus Robertus Caluin per gardianos ſuos prædictos, quam prædicti Richardus Smith & Nicholaus Smith p attornat' ſuum præd', &c. Et quia curia, &c.

The queſtion of this matter in law was, whether Robert Caluin the plaintife (being borne in Scotland ſince the crowne of England deſcended to his Maieſtie) be an alien born, and conſequently diſabled to bring any reall or perſonall action for any lands within the realme of England. The queſtion.

After this caſe had beene argued in the court of the kings Bench, at the barre, by the coũſell learned of either partie, the Iudges of that court, vpon conference and conſideration of the weight and importance thereof, adiourned the ſame (according to the auncient and ordinarie courſe and order of law) into the Exchequer chamber, to bee argued openly there; firſt by counſell learned of either partie, and then by all the Iudges of England: where afterwards the caſe was argued by Bacon Solliciter generall, on the part of the plaintife, and by Laur̃ Hide for the defendant: and afterward by Hobart Attorney generall, for the plaintife, and by Serieant Hutton for the defendant: and in Eaſter terme laſt, the caſe was argued by Heron puiſne baron of the Exchequer, & Foſter puiſne Iudge of the court of Common Pleas: and on the ſecond day appointed for this caſe, by Crooke puiſne Iudge of the K. Bench, and Altham baron of the Exchequer: the third day by Snigge baron of the Exchequer, and Williams one of the Iudges of the K. Bench: the fourth day by Daniel one of the Iudges of the court of common Pleas, and by Yelverton one of the Iudges of the K. Bench: And in Trinitie terme following, by Warburton one of the Iudges of the common Pleas, and Fenner one of the Iudges of the kings Bench: and after argued Walmeſley one of the Iudges of the common Pleas, and Tanfield chiefe baron: and at two ſeuerall daies in the ſame Terme, Coke chiefe Iuſtice of the common Pleas, Fleming chiefe Iuſtice of the kings Bench, and Sir Thomas Egerton, Lord Elleſmere, Lord Chancellor of England argued the caſe (the like plea in diſabilitie How this caſe hath proceeded.

of Robert Caluins perſon being pleaded mutatis mutandis in the Chauncerie in a ſuite there for euidence concerning lands of inheritance, and by the Lord Chancellour adiourned alſo into the Exchequer chamber, to the end that one rule might ouerrule both the ſaid caſes.) And firſt (for that I intend to make as ſummarie a Report as I can) I will at the firſt ſet downe ſuch arguments and obiections as were made and drawne out of this ſhort record againſt the plaintife, by thoſe that argued for the defendants. It was obſerued, that in this plea there were foure Nownes, quatuor nomina, which were called nomina operatiua, becauſe from them all the ſaid arguments and obiections on the part of the defendants were drawne: that is to ſay, ¶ 1. Ligeantia, which is twice repeated in the plea, for it is ſaid, Infra ligeantiam domini regis regni ſui Scotiæ, & extra ligeantiam dñi regis regni ſui Angliæ. ¶ 2. Regnum (which alſo appeareth to be twice mentioned, viz. regnũ Angliæ, and regnũ Scotiæ.) ¶ 3. Leges (which are twice alledged, viz. leges Angliæ, and leges Scotiæ, two ſeuerall and diſtinct lawes.) ¶ 4. Alienigena (which is the concluſion of all, viz. that Robert Caluin is Alienigena.) By the firſt it appeareth, that the defendãts doe make two ligeances, one of England, and another of Scotland, and from theſe ſeuerall ligeances two arguments were framed, which briefely may bee concluded thus: Whoſoeuer is borne infra ligeantiam, within the ligeance of King Iames of his kingdome of Scotland, is Alienigena, an alien borne, as to the kingdome of England: but Robert Caluin was borne at Edenborough, within the ligeance of the King of his kingdome of Scotland: therefore Robert Caluin is Alienigena, an alien borne, as to the kingdome of England. 2. Whoſoeuer is borne extra ligeantiam, out of the ligeance of King Iames of his kingdome of England, is an alien as to the kingdome of England: but the plaintife was borne out of the ligeance of the King of his kingdom of England, therefore the plaintife is an alien, &c. Both theſe arguments are drawne from the very words of the plea, viz. Quod prædict⁹ Robertus eſt alienigena, natus 5. Nouembris anno regni domini regis nunc Angliæ, &c. tertio apud Edenborough infra regnũ Scotiæ, ac infra ligeantiã dicti dom̃ regis dicti regni ſui Scotiæ, ac extra ligeãtiã dicti dñi regis regni ſui Angliæ. From the ſeuerall kingdomes, viz. regnum Angliæ, and regnum Scotiæ, three arguments were drawne: 1. Quando duo iura (imo duo regna) concurrunt in vna perſona, æquum eſt ac ſi eſſent in diuerſis: but in the K. perſon there concurre two diſtinct & ſeuerall kingdomes: therefore it is all one as if they were in diuers perſõs and

The arguments and obiections on the part of the def.

and conſequently the plaintike is an alien as all the Antenati be, for that they were borne vnder the ligeance of another King. 2. Whatſoeuer is due to the Kings ſeuerall politique capacities of the ſeuerall kingdomes is ſeuerall and diuided: but ligeance of each nation is due to the Kings ſeuerall politique capacities of the ſeuerall kingdomes; Ergo, The ligeance of each nation is ſeuerall and diuided, and conſequently the plaintike is an alien, for that they that be borne vnder ſeuerall ligeances, are aliens one to another. 3. Where the King hath ſeuerall Kingdomes by ſeuerall titles and diſcents, there alſo are the ligeances ſeuerall: But the king hath theſe two kingdomes by ſeuerall titles and diſcents, therefore the ligeances be ſeuerall. Theſe 3. arguments are collected alſo from the words of the plea before remembred.

From the ſeuerall and diſtinct Lawes of either Kingdom, they did reaſon thus. 1. Euery ſubiect that is borne out of the extēt and reach of the lawes of England, cannot by iudgement of thoſe lawes be a naturall ſubiect to the king, in reſpect of his kingdom of England: but the plaintike was borne at Edenborough out of the extent and reach of the lawes of England; therefore the pl by the iudgement of the Lawes of England cannot be a naturall ſubiect to the king, as of his kingdom of England. 2. That ſubiect, that is not at the time and in the place of his birth inheritable to the lawes of England, cannot be inheritable or partaker of the benefits and priuiledges giuen by the lawes of England: but the plaintike at the time and in the place of his birth was not inheritable to the lawes of England (but onely to the lawes of Scotland) therefore hee is not heritable, or to bee partaker of the benefits or priuiledges of the lawes of England. 3. Whatſoeuer appeareth to be out of the iuriſdiction of the lawes of England, cannot be tried by the ſame Lawes: but the plaintikes birth at Edenborough is out of the iuriſdiction of the lawes of England, therefore the ſame cannot be tried by the lawes of England. which three arguments were drawne from theſe words of the plea, viz. Quodque tēpore natiuitatis prædicti Roberti Caluin ac diu antea, & continue poſtea, ōdictum regnum Scotiæ p iura, leges, & ſtatut' eiuſdē regni p priz, & non per iura leges, ſeu ſtatut' huius regni Angliæ regulat' & gubernat' fuit, & adhuc eſt. from this word Alienigenæ they argued thus. Euery ſubiect that is alienæ gentis (id eſt) alienæ ligeantiæ, eſt alienigena: but ſuch a one is the plaintike; therefore, &c. And to theſe 9. arguments, all that was ſpoken learnedly & at large by thoſe that argued againſt the pl may be reduced.

But it was reſolued by the L. Chauncellor & twelue Iudges, viz. the two chiefe Iuſtices, the chiefe baron, Iuſtice Fenner, Warberton, Yeluerton, Daniel, Williams, baron Snig, baron Altham, Iuſtice Crooke, and baron Heron, that the plaintife was no alien, and conſequently that he ought to be anſwered in this Aſſiſe by the defendant.

How this caſe was argued by the L. Chancelor and the Iudges.

This caſe was as elaborately, ſubſtantially, and iudicially argued by the Lord Chauncellor, and by my brethren the Iudges, as I euer read or heard of any; and ſo in mine opinion the weight and conſequence of the caule, both in præſenti, & perpetuis futuris temporibus iuſtly deſerued: for though it was one of the ſhorteſt and leaſt that euer we argued in this court, yet was it the longeſt and weightieſt that euer was argued in any court; the ſhorteſt in ſyllables, and the longeſt in ſubſtance; the leaſt for the value (and yet not tending to the right of that leaſt) but the weightieſt for the conſequent, both for the preſent, and for all poſteritie. And therefore it was ſaid, that thoſe that had written de foſſilibus did obſerue, that gold hidden in the bowels of the earth, was in reſpect of the maſſe of the whole earth, paruũ in magno: but of this ſhort plea it might be truely ſaid (which is more ſtrange) that here was magnum in paruo. And in the arguments of thoſe that argued for the plaintife I eſpecially noted, That albeit they ſpake according to their owne heart, yet they ſpake not out of their owne head and inuention: wherein they followed the counſell giuen in Gods booke, Interroga priſtinam generationem (for out of the old fields muſt come the new corne) & diligenter inueſtiga patrum memoriam, and diligently ſearch out the iudgements of our forefathers: and that for diuers reaſons. Firſt on our owne part, Heſterni enim ſumus & ignoramus, & vita noſtra ſicut vmbra ſuper terram: for wee are but of yeſterdaie (and therefore had need of the wiſedome of thoſe that were before vs) and had beene ignorant (if we had not receiued light and knowledge from our forefathers) and our dayes vpon the earth are but as a ſhadow, in reſpect of the old and auncient dayes and times paſt, wherein the lawes haue beene by the wiſedome of the moſt excellent men, in many ſucceſſions of ages, by long and continuall experience (the triall of right and truth) fined and refined, which no one man (being of ſo ſhort a time) albeit hee had in his head the wiſedome of all the men in the world, in any one age could euer haue effected or attayned vnto. And therefore it is optima regula, qua nulla eſt verior aut firmior in iure, Neminem oportet eſſe ſapientiorem legibus: no man ought to

Iob 8.8.

take

take vpon him to be wiser than the lawes? Secondly, in respect of our forefathers: Ipſi (saith the text) docebunt te, & loquentur tibi, & ex corde ſuo proferunt eloquia, they shall teach thee, and tell thee, and shall vtter the words of their heart, without all equiuocation or ment all reseruation, they (I say) that cannot bee daunted with feare of any power about them, nor be dazeled with the applause of the popular about them, nor fretted with any discontentment (the matter of opposition and contradiction) with them, but shall speake the words of their heart, without all affection or infection whatsoeuer.

Also in their arguments of this case concerning an alien, they told no strange histories, cited no forreine lawes, produced no alien presidents, and that for two causes: the one, for that the lawes of England are so copious in this point, as God willing by the report of this case shall appeare: the other, least their arguments cõcerning an alien born, should become forrein, strange, and an alien to the state of the question, which being quæstio iuris, concerning freehold and inheritance in England, is onely to bee decided by the lawes of the Realme. And albeit I concurred with those that adiudged the plaintife to bee no alien, yet doe I find a meere stranger in this case, such a one as the eye of the law (our bookes, and booke cases) neuer saw, as the eares of the law (our Reporters) neuer heard of, nor the mouth of the law (for Index est lex loquēs) the iudges our forefathers of the law neuer tasted: I say, such a one, as the stomach of the law, our requisite & perfect Records of pleadings, entries, & iudgements (that make equall and true distribution of all cases in question) neuer digested. In a word, this little plea is a great stranger to the lawes of England, as shall manifestly appeare by the resolution of this case. And now that I haue taken vpon me to make a report of their arguments, I ought to doe the same as truely, fully, and sincerely, as possibly I can: howbeit, seeing that almost euery Iudge had in the course of his argument a peculiar method, and I must onely hold my selfe to one, I shall giue no iust offence to any, if I challenge that which of right is due to euery Reporter, that is, to reduce the summe & effect of all to such a method, as vpon consideration had of all the arguments, the Reporter himselfe thinketh to be fittest and clerest for the right vnderstanding of the true reasons and causes of the iudgement and resolution of the case in question.

The method that the Reporter doth vse.

In this case 5. things did fall into consideration. ¶ 1. Ligeantia. ¶ 2. Leges. ¶ 3. Regna. ¶ 4. Alienagena. ¶ 5. what legall

what things did fall into consideratiõ in this case.

legall inconueniences would ensue on either side.

1. Concerning ligeance: 1. It was resolued what ligeance was: 2. How many kinds of ligeances there were: 3. Where ligeance was due: 4. To whom it was due: and lastly, How it was due.

2. For the lawes: 1. That ligeance, or obedience of the subiect to the soueraigne, is due by the law of nature: 2. That this law of nature is part of the lawes of England: 3. That the law of nature was before any iudiciall or municipall law in the world: 4. That the law of nature is immutable and cannot be changed.

3. As touching the kingdoms: How far forth by the act of law the union is already made, and wherein the kingdomes doe yet remaine separat and diuided.

4. Of Aliens, an alien borne: 1. What an alien borne is in law: 2. The diuision and diuersitie of aliens: 3. Incidents to euery alien: 4. Inabilities in law: 5. Demonstratiue conclusions vpon the premisses, that the plaintife can be no alien.

5. Vpon due consideration had of the consequent of this case: What inconueniences legall should follow on either partie.

And these seuerall parts I will in this Report pursue in such order as they haue been propounded: and first de Ligeancia.

The 1. generall part. What ligeance is.

1. Ligeance is a true and faithfull obedience of the subiect due to his soueraigne. This ligeance and obedience is an incident inseperable to euery subiect; for as soone as he is borne hee oweth by birth right ligeance and obedience to his soueraigne. Ligeantia est vinculum fidei: and Ligeantia est quasi legis essentia. Ligeantia est ligamentum, quasi ligatio mentium: quia sicut ligamentum est connexio articulorum & iuncturarum, &c. As the ligatures or strings do knit together the ioynts of all the parts of the bodie, so doth ligeance ioyne together the soueraigne and all his subiects, quasi vno ligamine. Glanuill, who wrote in the raigne of Hen. 2. lib. 9. cap. 4. speaking of the connexion which ought to bee betweene the Lord and tenant that holdeth by homage, fealty, That mutua debet esse domini & fidelitatis connexio, ita quod quantum debet domino ex homagio, tantũ illi debet dominus ex dominio, praeter solã reuerentiã, and the Lord (saith he) ought to defend his tenant. But betweene the soueraigne and the subiect there is without comparison a higher and greater connexion: for as the subiect oweth to the king his true and faithfull ligeance & obedience, so the soueraigne is to gouerne and protect his subiects,

regere

regere & proregere ſubditos ſuos: **ſo as betweene the ſoueraigne and ſubiect there is** duplex & reciprocum ligamen; quia ſicut ſubditus regi tenetur ad obedientiam, ita rex ſubdito tenetur ad protectionem: meritò igitur ligeantia dicitur à ligando, quia continet in ſe duplex ligamen. **And therefore it is holden in** 20.H.7.8. **that there is a liege or ligeance betweene the King and the ſubiect.** And Forteſcue cap.13. Rex ad tutelem legis, corporum, & bonorum erectus eſt. **And in the acts of Parliament of** 10.R.2.cap.5. & 11.R.2.cap.15 14.H.8.cap.2.&c. **Subiects are called liege people: & in the acts of Parliament in** 34.H.8.cap.1.& 35.H.8.cap.3.&c. **the King is called the liege Lord of his Subiects. And with this agreeth** M. Skene **in his booke** de expoſitione verborũ (**which booke was cited by one of the Iudges which argued againſt the plaintife**) **Ligeance is the mutuall bond and obligation betweene the King and his ſubiects whereby ſubiects are called his liege ſubiects, becauſe they are bound to obey and ſerue him, and hee is called their liege Lord, becauſe hee ſhould maintaine and defend them, whereby it appeareth, that in this point the law of England, & of Scotland is all one. Therefore it is truly ſaid that** protectio trahit ſubiectionẽ, & ſubiectio protectionem. **And hereby it plainly appeareth, that ligeance doth not begin by the oath in the Leete: for many men owe true ligeãce that neuer were ſworn in a Leet, and the ſwearing in a Leet maketh no denization, as the booke is adiudged in** 14.H.4.fol.16. **This word Ligeance is well expreſſed by diuers ſeuerall names or** Synonima **which we finde in our bookes. Sometime it is called the obedience or obeyſance of the ſubiect to the King,** obedientia regi, 9.E.4.7.9.E.4.6.2.R.3.2. **in the booke of Entries,** Eiectione firmæ 7.14.H.8.ca.2.22.H.8.ca.8 &c. **Sometime he is called a naturall liege man that is borne vnder the power of the King,** ſub poteſtate regis, 4.H.3.tit' Dower. Vide ſtatute de 11.E.3 cap.2. **Somtime ligeance is called faith,** Fides, ad fidem regis, &c. Bracton **who wrote in the raigne of** H.3.lib.5. tractat' de exceptionib', ca.24.fo.427. Eſt etiam alia exceptio quæ cõpetit ev perſonã querẽtis, pter defectũ nationis, vt ſi quis alienigena qui fuit ad fidẽ regis Franc' &c. **And** Fleta (**which booke was made in the raigne of** E.1.) **agreeth therewith, for** li.6.c.47. de exceptione exomiſſionis ptic' **it is ſaid,** vel dicere potuit, q̃ nihiliuris clamã poterit tãquã ptic', eo q̃ eſt ad fidẽ regis Frãciæ, quia alienigenæ repelli debẽt in Anglia ab agẽdo, donec fuer' ad fidẽ regis Angl'. Vide 25.E.3. de naris vltra mare, **foy & ligeance del Roy Dengliterre:** & Litt.lib.2.c. Homage, **ſalue le foy, q̃ ieo doy a nre ſeñr le Roy:** & Glanuil, lib.9.c.1. Salua fide debita dño Regi & hæredib' ſuis. **Sometimes ligeance is called**

called ligealty, 22. Aſſ. Pl. 25. By all which it euidently appeareth, that they that are borne vnder the obedience, power, faith, ligealtie, or ligeance of the king, are naturall ſubiects and no aliens. So as, ſeeing now it doth appeare what ligeance is, it followeth in order, that we ſpeak of the ſeuerall kinds of ligeance. But herein we need to be very wary, for this caueat the law giueth, vbi lex nõ diſtinguit, nec nos diſtinguere debemus: and certainly lex non diſtinguit, but where omnia mẽbra diuidentia are to be found out and proued by the law it ſelfe.

How many kind of ligeances there be.

¶ 2. There is found in the law 4. kind of ligeãces: the firſt, is ligeãtia naturalis, abſoluta, pura, & indefinita; & this originally is due by nature and birth-right, and is called alta ligeantia, and he that oweth this is called ſubditus natus. The 2. is called ligeãtia aquiſita, not by nature but by acquiſition or denization, being called a denizen, or rather donaizon, becauſe he is ſubditus datus. The 3. is ligeãtia localis, wrought by the law, and that is when an alien that is in amitie commeth into England, becauſe as long as hee is within England, he is within the kings protection; therefore ſo long as he is there, he oweth vnto the king a locall obedience or ligeance, for that the one (as it hath bin ſaid) draweth the other. The 4. is a legal obedience or ligeãce, which is called legal, becauſe the municipall lawes of this realme haue preſcribed the order and forme of it: & this to be done vpon oath at the Torne or Leet. The firſt, that is, ligeance naturall, &c. appeareth by the ſaid acts of Parliament, wherein the king is called naturall liege Lord, & his people naturall liege ſubiects: this alſo doth appeare in the inditements of treaſon (which of all other things are the moſt curiouſly and certainly indited & penned:) for in the inditement of the Lo. Dacre in 26. H. 8. it is ſaid, prædictus dñus Dacre debitũ fidei & ligeantiæ ſuæ q̃ præfato dño regi naturaliter & de iure impendere debuit, minime curans, &c. And Reginald Poole was indited in 30. H. 8. for committing treaſon cont' dñm regẽ ſupremum & naturalem dñm ſuũ. And to this end were cited the inditemẽt of Edward duke of Somerſet in 5. E. 6. and many others both of ancient and later times. But in the inditement of treaſon of Iohn Dethick in 2. & 3. Ph. & Mar it is ſaid, q̃ prædict Iohannes machinãs, &c. prædict dñm Philippũ & dñam Mariam ſupremos dños ſuos, and omitted (naturales) becauſe king Philip was not his naturall liege Lord. And of this point more ſhall be ſaid when wee ſpeake of locall obedience. The ſecond is ligeantia acquiſita, or denization. And this in the books & records of the law appeareth to be threefold: 1. abſolute, as the common denizations bee, to them and their heires

Ligeantia naturalis.

Ligeantia acquiſita.

heires without any limitation or restraint: 2. limited, as when the king doth grant letters of denization to an alien, and to the heires males of his body, as it appeareth in 9. E. 4. fo. 7. in Baggots case; or to an alien for terme of his life, as was graunted to Iohn Reynel, 11. H. 6. 3. it may be graunted vpon condition; for cuius est dare, eius est disponere, whereof I haue seene diuers presidents. And this denization of an alien may be effected 3. manner of waies: by parliament, as it was in 3. H. 6. 55. in Dower: by letters patents, as the vsuall manner is: and by conquest, as if the King and his subiects should conquer another kingdome or dominion, as well Aduenati as Postnati as well they which fought in the field, as they which remained at home for defence of their countrey, or imployed elsewhere, are all denizens of the kingdome or dominion conquered. Of which point more shall be said hereafter.

3. Concerning the locall obedience, it is obseruable, that as there is a locall protection on the Kings part, so there is a locall ligeance of the subiects part. And this appeareth in 4. Mar. Br. 32. & 3. & 4. Ph. & Mar. Dier 144. Sherley a French man, being in amitie with the King, came into England, and ioyned with diuers subiects of this realme in treason against the King and Queene, and the inditement concluded contra ligeantiæ suæ debitum; for hee ought to the King a locall obedience, that is, so long as hee was within the Kings protection: which locall obedience, being but momentanie and incertaine, is strong enough to make a naturall subiect; for if he hath issue here, that issue is a naturall borne subiect: à fortiori hee that is borne vnder the naturall and absolute ligeance of the King (which as it hath bin said is alta ligeantia) as the pl' in the case in question was, ought to bee a naturall borne subiect; for localis ligeantia est ligeantia infima, & minima, & maxime incerta. And it is to be obserued, that it is nec cœlum, nec solum, neither the clymat nor the soyle, but ligeantia and obedientia that make the subiect borne: for if enemies should come into the realme, and possesse a towne or fort, and haue issue there, that issue is no subiect to the King of England, though he bee borne vpon his soile, and vnder his meridian, for that hee was not borne vnder the ligeance of a subiect, nor vnder the protection of the K. And concerning his locall obedience, a president was cited in Hill 36. Elizab. when Stephano Farrara de Gama, and Emanuell Lewes Tinoco, two Portugals borne, comming into England vnder Queene Elizabeths safe conduct, and liuing here vnder her protection, ioyned with Doctor Lopez in treason within

Ligeantia localis.

this Realme againſt her Maieſtie: And in this caſe two points were reſolued by the Iudges: Firſt, that their indictment ought to begin, that they intended treaſon contra dñam Reginam, &c. omitting theſe words (naturalem dñam ſuam) and ought to conclude contra ligeantiæ ſuæ debitum. But if an alien enemie come to inuade this realme, and be taken in warre, hee connot be indicted of treaſon: for the indictmẽt cannot conclude contra ligeantiæ ſuæ debitum, for he neuer was in the protection of the King, nor euer ought any manner of ligeance vnto him, but malice and enmitie; and therefore he ſhall be put to death by martiall law. And ſo it was in anno 15. H. 7. in Parkin Warbecks caſe, who being an alien borne in Flaunders, fained himſelfe to be one of the ſons of Ed. the fourth, and inuaded this Realme with great power, with an intent to take vpon him the dignitie royall: but being taken in the warre, it was reſolued by the Iuſtices, that hee could not be puniſhed by the common law: but before the Conſtable and Marſhall (who had ſpeciall commiſſion vnder the great Seale, to heare and determine the ſame according to martiall law) hee had ſentence to be drawne, hanged, and quartered, which was executed accordingly. And this appeareth in the booke of Griffeth Atturney generall, by an extract out of the booke of Hobart Atturney generall to King H. 7.

Ligeantia legalis.

4. Now are wee to ſpeake of legall ligeance, which in our bookes, viz. 7. E. 2. tit. Auowrie 211. 4. E. 3. fol. 42. 13. E. 3. tit. Auowrie 120. &c. is called Suit Royall, becauſe that the ligeance of the ſubiect is onely due vnto the King. This oath of ligeance appeareth in Britton, who wrot in anno 5. E. 1. cap. 29. (and is yet commonly in vſe to this day in euery Leet) and in our bookes: the effect whereof is, You ſhall ſweare, that from this day forward, you ſhall be true and faithfull to our Soueraigne Lord King Iames, and his heires, and truth and faith ſhall beare of life and member, and terrene honour, and you ſhall neither know nor heare of any ill or dammage intended vnto him, that you ſhall not defend, ſo helpe you Almighty God. The ſubſtance and effect hereof is (as hath beene ſaid) due by the law of nature, ex inſtitutione naturæ, as hereafter ſhall appeare: the forme and addition of the oath is, ex prouiſione hominis. In this oath of ligeance 5. things were obſerued: 1. That for the time, it is indefinite, and without limit, from this day forward: 2. Two excellent qualities are required, that is, to be true and faithfull: 3. To whom? to our Soueraigne Lord the King and his heires: (And albeit Britton doth ſay, to the King of England, that is ſpoken propter excellentiam, to deſigne the perſon, and not

to

to confine the ligeance: for a Subiect doth not sweare his ligeance to the King, onely as the King of England, and not to him as King of Scotland, or of Ireland, &c. but generally to the King: 4. in what manner? and faith and troth shall beare, &c. of life and member; that is, vntill the letting out of the last drop of our dearest heart blood: 5. where, and in what places ought these things to be done? in all places whatsoeuer: for, you shall neuer know nor heare of any ill or damage, &c. that you shall not defend, &c. so as naturall ligeance is not circumscribed within any place. It is holden 3. H. 7. 18. b. That hee that is sworne in the Leete, is sworne to the King for his ligeance, that is, to be true and faithfull to the King: and if hee be once sworne for his ligeance, hee shall not bee sworne againe during his life. And all Letters patents of denization be, that the patentee shall behaue himselfe tanquam verus & fidelis ligeus domini Regis. And this oath of Ligeance at the Tourne and Leete was first instituted by King Arthur: for so I read, Inter leges sci Edouardi Regis ante conquestum 3. cap. 35. Et quod omnes principes & comites, proceres, milites, & liberi homines debent iurare, &c. in Folkemote, & similiter omnes proceres regni, & milites, & liberi homines vniuersi totius regni Britaniæ facere debent in pleno Folkemote fidelitatem domino Regi, &c. Hanc legem inuenit Arthurus qui quondam fuit inclitissimus Rex Britonum, &c. huius legis authoritate expulit Arthurus Rex Saracenos & inimicos a regno, &c. & huius legis authoritate Ethelredus Rex vno & eodem die per vniuersum regnum Danos occidit. Vide Lambert inter Regis Edouardi, &c. fo. 135. & 136. By this it appeareth, when and from whom this legall ligeance had his first institution within this Realme. Ligeantia in the case in question, is meant and intended of the first kinde of ligeance, that is, of the ligeance naturall, absolute, &c. due by nature and birth right. But if the plaintifes father be made a denizen, and purchase lands in England to him and his heires, and die seised, this land shall neuer discend to the plaintife, for that the King by his Letters Patents may make a denizen, but cannot naturalize him to all purposes, as an act of Parliament may doe: neither can Letters patents make any inheritable in this case, that by the common Law cannot inherite. And herewith agreeth 36. H. 6. tit' Denizen, Br. 9.

Homage in our bookes is twofold, that is to say, Homagium Ligeum, and that is as much as ligeance, of which Bracton speaketh, lib. 2. ca. 35. fo. 79. Soli Regi debetur sine dominio, seu seruitio: Homage is twofold.

and there is Homagium feudale, which hath his originall by tenure. In Fit. Nat. Bre 269. there is a writt for reſpecting of this latre homage (which is due ratione feodi ſiue tenuræ) Sciatis quod reſpectuamus homagium nobis de terr' & tenis quæ tenentur de nobis in capite debit'. But Homagium legiũ, i. Ligeantiæ, is inherent and inſeparable, and cannot be reſpected.

Where naturall ligeance is due.

C. 3. Now are wee come vnto (and almoſt paſt) the conſideration of this circumſtance, where naturall ligeance ſhould bee due: For by that which hath beene ſaid it appeareth, that ligeance, and faith and truth, which are her members and parts, are qualities of the minde and ſoule of man, and cannot bee circumſcribed within the predicament of vbi, for that were to confound predicaments, and to goe about to driue (an abſurd and impoſſible thing) the predicament of qualitie into the predicament of vbi. Non reſpondetur ad hanc queſtionem, vbi eſt? to ſay, Verus & fidelis ſubditus eſt: ſed ad hanc queſtionem, qualis eſt? rectè & aptè reſpondetur, verus & fidelis ligeus, &c. eſt. But yet for the greater illuſtration of the matter, this point was handled by it ſelfe, and that ligeance of the ſubiect was of as great an extent and latitude, as the royall power and protection of the King, and è conuerſo. It appeareth by the ſtatute of 11. H. 7. cap. 1. and 2. E. 6. ca. 2. that the ſubiects of England are bound by their ligeance to go with the King, &c. in his warres, as well within the Realme, &c. as without. And therefore wee daily ſee, that when either Ireland or any other of his Maieſties dominions bee infeſted with inuaſion or inſurrection, the King of England ſendeth his ſubiects out of England, and his ſubiects out of Scotland alſo into Ireland, for the withſtanding or ſuppreſſing of the ſame, to the end his rebels may feele the ſwords of either nation. And ſo may his ſubiects of Gernſey, Jerſey, Iſle of Man, &c. be cõmanded to make their ſwords good againſt either rebel or enemie, as occaſion ſhall be offered: whereas if naturall ligeance of the ſubiects of England ſhould be local, that is, cõfined within the realm of England or Scotland, &c. then were not they bound to go out of the continent of the realme of England or Scotland, &c. And the opiniõ of Thirninge in 7. H. 4. tit' Protect' 100. is thus to be vnderſtood, that an Engliſh ſubiect is not compellable to goe out of the realm without wages, according to the ſtatutes of 1. E. 3. c. 7. 18. E. 3. c. 8. 18. H. 6. c. 19. &c. 7. H. 7. c. 1. 3. H. 8. c. 5. &c. In añ 25. E. 1. Bigot Earle of Norff. and Huſſ. a Earle marſhal of Englãd, and Bohun Earle of Heref. a high Conſtable of Englãd, did exhibit a petitiõ to the K. in frẽch (which I haue ſeen anciẽtly recorded on

the

the behalfe of the commons of England, concerning how and in what sort they were to be imployed in his Maiesties warres out of the realme of England: and the Record saith that, (post multas & varias altercationes,) it was resolued they ought to go but in such manner and forme as after was declared by the said Statutes, which seeme to be but declaratiue of the common law. And this doth plentifully and manifestly appeare in our bookes, being truly and rightly vnderstood. In 33.H.6.tit. Protection 2. one had the benefit of a protection, for that hee was sent into the K. warres in comitiua of the protector: and it appeareth by the Record and by the Chronicles also, that this imployment was into France; the greatest part thereof then being vnder the Kings actuall obedience, so as the subiects of England were imployed into Frãce for the defence and safetie thereof: In which case it was obserued, that seeing the protector, who was Prorex, went, the same was adiudged a voyage royall. 8.H.6.fol.16. the Lord Talbot went with a company of Englishmen into France, then also being for the greatest part vnder the actuall obedience of the K. who had the benefit of their protections allowed vnto them. And here were obserued the words of the writ in the Register, fol.88. where it appeareth, that men were imployed in the Kings warres out of the realme per præceptum nostrum, and the vsuall words of the writ of protection be, in obsequio nostro. 32.H.6.fol.4. it appeareth, that Englishmen were pressed into Guyan, 44.E.3.12. into Gascoigne with the duke of Lancaster, 17.H.6.tit. Protection, into Gascoigne with the Earle of Huntingdon, steward of Guyan, 12.H.4.7. into Ireland, and out of this realme with the Duke of Gloucester and the Lord Knolles: Vide 19.H.6.35. And it appeareth in 19.E.2.tit. Auowry 224. 26.Ass.66. 7.H.4.19. &c. that there was forinsecum seruitium forreine seruice, which Bracton. fol.36. calleth regale seruitium: and in Fitzh.N.B.28. that the King may send men to serue him in his warres beyond the sea. But thus much (if it bee not in so plaine a case too much) shall suffice for this point for the Kings power, to commaund the seruice of his Subiects in his warres out of the Realme: whereupon it was concluded, That the ligeance of a naturall borne subiect was not locall, and confined onely to England. Now let vs see what the law saith in time of peace, concerning the Kings protection and power of commaund, as well without the realme vs within, that his subiects in all places may be protected from violence, and that iustice may equally be administred to all his Subiects.

Caluins caſe.

In the Regiſter, fo. 25. b. Rex vniuerſis & ſingulis admirallis, ceſtellanis, cuſtodibus caſtrorum, villarum, & aliorum fortaliciorum præpoſitis, vicecom̃, maioribus, cuſtumarijs, cuſtodibus portuum, & aliorum locorum maritimorum balliuis, miniſtris, & alijs fidelibus ſuis, tam in tranſmarinis quam in ciſmarinis partibus, ad quos, &c. Salutem. Sciatis quod ſuſcepimus in protectionem & defenſionem noſtram, necnon ad ſaluum & ſecurum gardiam noſtram, W. veniendo in regnum noſtrum Angl' & poteſtatem noſtram, tam per terram quam per mare cum vno valetto ſuo, ac res ac bona ſua quæcunque, ad tract̃d cum dilecto nr̃o & fideli L. pro redemptione priſonarij ipſius L. infra regnum & poteſtat̃ noſtr̃ā predict', per ſex menſes morando, & ex inde ad propria redeundo. Et ideo, &c. quod ipſum W. cum valetto, rebꝰ & bonis ſuis p̃dictis veniendo in regn̄ & poteſtatem noſtr̃ā p̃d tam p terram quam per mare ibidem vt prædictum eſt ex cauſa antedicta morando, & exinde ad propria redeundo, manuteneatis, protegatis, & defendatis: non inferentes eis, &c. ſeu grauamen. Et ſi quid eis forisfactū, &c. reformari faciatis. In cuius, &c. p ſex m̃ēſes duraturū. T. &c. **In which writ 3. things are to be obſerued:** 1. **that the king hath** fidem & fideles in partibus tranſmarinis: 2. **that he hath** protectionem in partibus tranſmarinis: 3. **that hee hath** poteſtatem in partibus tranſmarinis.

In the Regiſter, fo. 26. Rex vniuerſis & ſingulis admirallis, caſtellanis, cuſtodib' caſtrorū, villarū, & aliorum fortaliciorū præpoſitis, vicecom̃, maioribus, cuſtumarijs, cuſtodibus portuum, & aliorum locorum maritimorū balliuis, miniſtris, & alijs fidelibus ſuis, tam in tranſmarinis quam in ciſmarinis partibus ad quos, &c. Salutem. Sciatis quod ſuſcepimus in protectionem & defenſionem noſtram, necnon in ſaluum & ſecurum conductum noſtrum I. valettum P. & L. Burgenſium de Lyons obſidum noſtrorum, qui de licentia noſtra ad partes tranſmarinas profecturus eſt, pro finantia magiſtrorum ſuorum prædictoꝝ obtinenda vel deferenda, eundo ad partes prædictas, ibidem morando, & exinde in Angliam redeundo. Et ideo vobis mandamus, quod eidem L. eundo ad partes prædictas, ibidem morando, & exinde in Angliam redeundo, vt prædict' eſt, in perſona, bonis, aut rebus ſuis, non inferatis, ſeu quantum in vobis eſt ab alijs inferri permittatis iniuriam, moleſtiam, &c. aut grauamen. Sed eum potius ſaluum & ſecurum conductum, cum per loca, paſſus, ſeu diſtrictus veſtros tranſierit, & ſuper hoc requiſiti fueritis, ſuis ſumptibus habere faciatis. Et ſi quid eis forisfactum fuerit, &c. reformari faciatis. In cuius, &c. per tres annos duraturū. T. &c. **And certainely this was, when Lyons in France (bordering vpon Burgundy, an auncient friend to England) was vnder the actuall obedience of king Henry the 6. For the king commaunded** fidelibus ſuis, **his faithfull magiſtrates there,**

that

that if any iniurie were there done, it ſhould be by them redreſſed and redreſſed, and that they ſhould protect the party in his perſon and goods in peace. In the Regiſter, fol. 26. two other writs: Rex omnibus ſeneſchallis, maioribus, iuratis, paribus, præpoſitis, balliuis & fidelibus ſuis in ducatu Acquitaniæ ad quos, &c. ſalutem. Quia dilecti nobis T. & A. ciues ciuitatis Burdegaliæ coram nobis in Cancellaria noſtra Angliæ & Aquitaniæ iura ſua proſequentes, & metuentes ex veriſimilibus coniecturis per quaſdam ſibi comminantes tam in corpore quam in rebus ſuis, ſibi poſſe graue damnum inferri, ſupplicauerunt nobis ſibi de protectione regia prouidere: nos volentes dictos T. & A. ab oppreſſionibus indebitis præſeruare, ſuſcepimus ipſos T. & A. res ac iuſtas poſſeſſiones & bona ſua quæcunque in protectionem & ſaluam gardiam noſtram ſpecialem. Et vobis & cuilibet veſtrum iniungimus & mandamus, quod ipſos T. & A. familias, res ac bona ſua quæcunque à violentijs & grauaminibus indebitis defendatis, & ipſos in iuſtis poſſeſſionibus ſuis manuteneatis. Et ſi quid in præiudiciũ huius protectionis & ſaluæ gardiæ noſtræ attentatum inueneritis, ad ſtatũ debitum reducatis. Et ne quis ſe poſſit per ignorantiam excuſare, præſentem protectionem & ſaluã gardiam nr̃am faciatis in locis de quibus requiſiti fueretis infra diſtrict' veſtrũ publicè intimari, inhibentes omnibus & ſingulis ſub pœnis grauibus, ne dictis A. & T. ſeu famulis ſuis in perſonis ſeu rebus ſuis, iniuriam, moleſtiam, damnum aliquod inferant, ſeu grauamen: & penocellas noſtras in locis & bonis ipſorum T. & A. in ſignum protectionis & ſaluæ gardiæ memoratæ, cum ſuper hoc requiſiti fueritis, apponatis. In cuius, &c. Dat' in palatio noſtro Weſtm̃ ſub magni ſigilli teſtimonio, ſexto die Auguſti anno 44. E. 3. Rex vniuerſis & ſingulis ſeneſchallis, cõſtabularijs, caſtellanis, præpoſitis, miniſtris, & omnibus balliuis & fidelib' ſuis in dominio nr̃o Aquitaniæ conſtitutis ad quos, &c. Salutem. Volentes G. & R. vxorem eius fauore proſequi grauioſè: ipſos G. & R. homines & familias ſuas, ac iuſtas poſſeſſiones, & bona ſua quæcunque, ſuſcepimus in protectionem & defenſionẽ noſtram, necnon in ſaluam gardiam noſtram ſpecialem. Et ideo vobis & cuilibet veſtrũ iniungimus & mandamus, quod ipſos G. & R. eorum homines, familias ſuas, ac iuſtas poſſeſſiones & bona ſua quæcunque manuteneatis, protegatis, & defendatis: non inferentes eis ſeu quantũ in vobis eſt ab alijs inferri permittentes, iniuriam, moleſtiam, damnum, violentiam, impedimentum aliquod ſeu grauamen. Et ſi quid eis forisfact', iniuriatum, vel contra eos indebite attentatum fuerit, id eis ſine delatione corrigi, & ad ſtatum debitum reduci faciatis, prout ad vos & quemlibet veſtrum noueritis pertinere: penocellas ſuper domibus ſuis in ſignum præſentis ſaluæ gardiæ noſtræ (prout moris fuerit) facientes. In cuius, &c. per vnum annum duraturũ. T. &c.

By all which it is manifeſt, that the protection and gouernment of the King is generall ouer all his dominions and kingdomes, as well in time of peace by iuſtice, as in time of warre by the ſword, and that all bee at his commaund, and vnder his obedience. Now ſeeing power and protection draweth ligeance, it followeth, that ſeeing the Kings power, commaund, and protection extendeth out of England, that ligeance cannot bee locall, or confined within the bounds thereof. He that is abiured the Realme, Qui abiurat regnum amittit regnum, ſed non regem, amittit patriam, ſed non patrem patriæ: for notwithſtanding the abiuration, hee oweth the King his ligeance, and hee remaineth within the Kings protection; for the King may pardon and reſtore him to his countrey againe. So as ſeeing that ligeance is a qualitie of the minde, and not confined within any place: it followeth, that the plea that doth confine the ligeance of the plaintife to the kingdome of Scotland, Infra ligeantiam regis regni ſui Scotiæ, & extra ligeantiam regis regni ſui Angliæ, whereby the defendants doe make one locall ligeance for the naturall ſubiects of Englād, and another locall ligeance for the naturall ſubiects of Scotland, is vtterly inſufficient, and againſt the nature and qualitie of naturall ligeance, as often it hath beene ſaid. And Coke, chiefe Iuſtice of the Court of Common pleas, cited a ruled caſe out of Hinghams Reports, Tempore E. 1. which in his argument hee ſhewed in Court written in parchment, in an auncient hand of that time. Conſtance de N. brought a writ of Ayel againſt Roger de Cobledike, and others, named in the writ, and counted that from the ſeiſin of Roger her grandfather it diſcended to Gilbert his ſonne, and from Gilbert to Conſtance, as daughter and heire. Sutton dit, Sir, el ne doit eſte reſponde, pur ceo que el eſt Francois & nient de la ligeance ne a la foy Dengliterre, et demaund iudgement ſi el doit action auer: that is, ſhee is not to be anſwered, for that ſhe is Frenchwoman & not of the ligeance nor of the faith of England, and demand iudgement, if ſhee this action ought to haue. Beresford then chiefe Iuſtice of the Court of Common pleas by the rule of the Court diſalloweth the plea, for that it was too ſhort, in that it referred ligeance and faith to England and not to the King: and thereupon Sutton ſaith as followeth: Sir, nous voilomus auerre que el neſt my de la ligeance Dengliterre, ne a la foy le Roy, & demaund iudgement, & ſi vous agardes que el doit eſte reſponde, nous dirromus aſſets: that is, Sir, wee will auerre, that ſhe is not of the ligeance of England, nor of the faith of the King, & demand iudgement, &c.

Cobledikes caſe in temps E. 1. Reported by Hingham.

which

which later words of the plea (nor of the faith of the King) referred faith to the King indefinitely and generally, and reſtrained not the ſame to England, and thereupon the plea was allowed for good, according to the rule of the Court: for the booke ſaith, that afterward the defendant deſired leaue to depart from her writ. The rule of that caſe of Cobledike did (as Coke chiefe Iuſtice ſaid) ouer-rule this caſe of Caluin, in the very point now in queſtion: for that the plea in this caſe doth not referre faith or ligeance to the King indefinitely and generally, but limitteth and reſtraineth faith and ligeance to the kingdome: Extra ligeantiam regis regni ſui Angliæ, out of the ligeance of the King of his kingdome of England: which afterwards the Lo. Chancellor and the chiefe Iuſtice of the Kings Bench, hauing copies of the ſaid auncient Report, affirmed in their arguments. So as this point was thus concluded, Quod ligeantia naturalis nullis clauſtris coercetur, nullis metis refrænatur, nullis finibus premitur.

To whom and how ligeãce is due.

¶ 4.a.5. By that which hath beene ſaid it appeareth, that this ligeance is due onely to the King: ſo as therein the queſtion is not now, cui, ſed quomodo debetur. It is true, that the King hath two capacities in him: one a naturall bodie, beeing diſcended of the blood royall of the Realme: and this body is of the creation of Almightie God, and is ſubiect to death, infirmitie, and ſuch like: the other is a politique body or capacitie, ſo called, becauſe it is framed by the policie of man (and in 21.E.4.39.b. is called a miſticall bodie:) and in this capacitie the King is eſteemed to be immortall, inuiſible, not ſubiect to death, infirmitie, infancie, nonage, &c. Vide Pl.com. in le caſe de Seignior Barkley 238. & in le caſe del Duchie 213. Vide 6.E.3.291. & 26.Aſſ.pl.54. Now ſeeing the King hath but one perſon, and ſeuerall capacities, and one politique capacitie for the Realme of England, and another for the Realme of Scotland, it is neceſſarie to be conſidered, to which capacitie ligeance is due. And it was reſolued, that it was due to the naturall perſon of the King (which is euer accompanied with the politique capacitie, and the politique capacitie as it were appropriated to the naturall capacitie) and is not due to the politique capacitie onely, that is, to the Crowne or kingdome, diſtinct from his naturall capacitie, and that for diuers reaſons. Firſt, euery ſubiect (as it hath beene affirmed by thoſe that argued againſt the plaint) is preſumed by law to be ſworne to the King, which is to his naturall perſon: and likewiſe the King is ſworne to his ſubiect (as it appeareth in Bracton, lib.3. de actionibus, cap.9. fol.107.) which oath he taketh in his naturall per-

perſon: for the politique capacitie is inuiſible & immortall; nay, the politique body hath no ſoule, for it is framed by the policie of man. 2. In all inditements of Treaſon, when any doe intend or compaſſe mortem & deſtructionem dñi Regis (which muſt needes be vnderſtood of his naturall body, for his politique body is immortall, and not ſubiect to death) the inditement concludeth, contra ligeantiæ ſuæ debitū, ergo the ligeance is due to the naturall body. Vid. Fit. Iuſtice of Peace 53. & Plo. Com. 384. in the Earle of Leiceſters caſe. 3. It is true, that the King in genere dieth not, but, no queſtion, in indiuiduo he dieth: as for example, H. 8. E. 6. &c. & Q. Elizabeth died, otherwiſe you ſhould haue many Kings at once. In 2. & 3. Ph. & Mar. Dier, 128. one Conſtable diſperſed diuers bils in the ſtreets in the night, in which was written, that King E. 6. was aliue, and in France, &c. and in Colman ſtreet in London he pointed to a young man, and ſaid that he was King Edward the ſixt. And this being ſpoken de indiuiduo (and accompanied with other circumſtances) was reſolued to be high Treaſon: for the which Conſtable was attainted and executed. 4. A bodie politique (being inuiſible) can as a body politique neither make nor take homage: Vide 33. H. 8. tit' Fealtie, Brooke. 5. In fide, in faith or ligeance nothing ought to be fained, but ought to bee ex fide non ficta. 6. The King holdeth the kingdome of England by birth-right inherent, by diſcent from the blood royall, whereupon ſucceſſion doth attend: and therefore it is vſually ſaid, to the King, his heirs and ſucceſſors, wherein heirs is firſt named, and ſucceſſors is attendant vpon heires. And yet in our ancient bookes, ſucceſſion and ſucceſſors are taken for hereditance and heires. Bracton lib. 2. de acquirendo rerum dominio, cap. 29. Et ſciendum eſt, quod hæreditas eſt ſucceſſio in vniuerſum ius quod defunctus anteceſſor habuit, ex quacunque cauſa acquiſitionis vel ſucceſſionis, & alibi affinitatis iure nulla ſucceſſio permittitur. But the title is by diſcent; by Queene Elizabeths death the crown and kingdome of England diſcended to his Maieſtie, and hee was fully and abſolutely thereby King, without any eſſentiall ceremonie or act to be done ex poſt facto: for coronation is but a royall ornament and ſolemnization of the royall diſcent, but no part of the title. In the firſt yeare of his Maieſties raigne, before his Maieſties coronation, Watſon and Clarke, ſeminarie prieſts and others were of opinion, that his Maieſtie was not complete and abſolute King before his coronation, but that coronation did adde a confirmation and perfection to the diſcent: and therefore (obſerue their damnable and damned conſequent) that they by

ſtrength

strength and power might before his coronation take him and his royall issue into their possession, keepe him prisoner in the Tower, remoue such counsellors and great officers as pleased them, and constitute others in their places, &c. and that these and others of like nature could not be Treason against his maiestie, before he were a crowned King. But it was cleerely resolued by all the Iudges of England, that presently by the discent his Maiesty was completely and absolutely King, without any essentiall ceremony or act to be done ex post facto, and that coronation was but a royall ornament, and outward solemnization of the discent. And this appeareth euidently by infinite Presidents and booke cases, as (taking one example in a case so cleere for all) King Henry the first was not crowned vntill the eight yeare of his raigne, and yet diuers men before his coronation were attainted of Treason, of Felony, &c. and he was as absolute and complete a King, both for matters of iudicature, as for grants, &c. before his coronation, as her was after, as it appeareth in the Reports of the 1. 2. 3. 4. 5. 6. and 7. yeares of the same King. And the like might be produced for many other Kings of this Realme, which for breuitie in a case so cleere I omit. By which it manifestly appeareth, that by the Lawes of England there can be no inter-regnum within the same. If the King be seised of land by a defeasible title, and dieth seised, this discent shall tolle the entrie of him that right hath, as it appeareth by 9. E. 4. 51. But if the next King had it by succession, that should take away no entry, as appeareth by Littl. fol. 97. If a disseisor of an infant conuey the land to the King, who dieth seised, this discent taketh away the entry of the infant, as it is said in 34. H. 6. fol. 34. 45. lib. Ass. pl. 6. Plow. Com. 234. where the case was, that King H. 3. gaue a manor to his brother the Earle of Cornewall in taile (at what time the same was a fee simple conditionall) King H. 3. died, the Earle before the statute of Donis condicional (hauing no issue) by deed exchanged the manor with warrãty for other lands in fee, and died without issue, and the warranty and assets discended vpon his nephew King Edward the first: and it was adiudged, that this warranty and assets, which discended vpon the naturall person of the King, barred him of the possibilitie of reuerter. In the raigne of Ed. 2. the Spencers, the father and the sonne, to couer the Treason hatched in their hearts, inuented this damnable and damned opinion. That homage and oath of ligeance was more by reason of the Kings Crowne (that is, of his politique capacitie) then by reason of the person of the

King

King, vpon which opinion they inferred execrable and deteſtable conſequents: 1. If the King doe not demeane himſelfe by reaſon in the right of his Crowne, his lieges are bound by oath to remoue the King: 2. Seeing that the King could not bee reformed by ſuite of Law, that ought to be done per aſperce: 3. That his lieges be bound to gouerne in ayde of him, and in default of him. All which were condemned by two Parliaments, one in the raigne of E.2. called exilium Hugonis le Spencer, and the other in Anno 1.E.3.cap.1. Bracton lib.2. de acquirendo rerum dominio, cap.24.fol.55. ſayth thus, Eſt enim corona Regis facere iuſticiam & iudicium, & tenere pacem, & ſine quibus corona conſiſtere non poteſt nec tenere; huiuſmodi autem iura ſiue iuriſdictiones ad perſonas vel tenemẽta transferri non potuerunt, nec à priuata perſona poſſideri, nec vſus nec executio iuris, niſi hoc datum fuit ei deſuper, ſicut iuriſdictio delegata delegari non poterit quin ordinaria remaneat cũ ipſo Rege. Et libro 3.de actionibus, ca.9.fol.107. Seperare autem debet Rex, cum ſit dei vicarius in terra, ius ab iniuria, æquum ab iniquo, vt omnes ſibi ſubiecti honeſtè viuãt, & quod nullus alium lædat, & quod vnicuique quod ſuum fuerit recta contributione reddatur. In reſpect whereof one ſaith, That Corona eſt quaſi cor ornans, cuius ornamenta ſunt miſericordia & iuſticia. And therefore a Kings Crowne is an Hierogliphicke of the Lawes, where iuſtice, &c. is adminiſtred: for one ſaith P.Val.lib.41.pag.400. Coronã dicimus legis iudiciũ eſſe, propterea quod certis eſt vinculis complicata, quibus vita noſtra velati religata coercetur. Therefore if you take that which is ſignified by the Crowne, that is, to doe iuſtice and iudgement, to maintaine the peace of the land, &c. to ſeparate right from wrong, and the good from the ill: that is to bee vnderſtood of that capacitie of the King, that in rei veritate hath capacitie, and is adorned and indued with indowments, as well of the ſoule as of the body, and thereby able to doe iuſtice and iudgement, according to right and equitie, and to maintaine the peace, &c. and to finde out and diſcerne the truth, and not of the inuiſible and immortall capacitie that hath no ſuch indowments, for of it ſelfe it hath neither ſoule nor body. And where diuers bookes and acts of parliament ſpeake of the ligeance of England, as 31.E.3.tit. Cofinage 5.42.E.3.2.13.E.3.tit' Bfe 677.25.E.3.ſtatut' 2. de natis vltra mare: All theſe and other ſpeaking briefely in a vulgar manner (for loquendum vt vulgus) and not pleading (for ſentiendum vt docti) are to bee vnderſtood of the ligeance due by the people of England to the King: For no man will affirme, that England it ſelfe, taking it for the Continent thereof, doth owe

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any ligeance or faith, or that any faith or ligeance should bee due to it: but it manifestly appeareth, that the ligeance or faith of the Subiect is proprium quarto modo to the King, omni, soli, & semper. And oftentimes in the Reports of our booke cases, and in Acts of Parliament also, the Crowne or Kingdome is taken for the King himselfe, as in Fitzh. Natur. Brc. fol. 5. tenure in capite is a tenure of the Crowne, and is a Seigniorie in grosse, that is, of the person of the King: and so is 30. Hen. 8. Dyer fol. 44. 45. a tenure in chiefe as of the Crowne is merely a tenure of the person of the King, and therewith agreeth 28. Henr. 8. tit. Tenure, Br. 85. The Statute of 4. Hen. 5. cap. Primo gaue Priors aliens, which were continuall to the King and his heires: by which gift saith 34. Henr 6. 34. the same were annexed to the Crowne. And in the said Act of 25. E. 3. whereas it is said in the beginning, within the ligeance of England, it is twice afterward said in the same Act within the ligeance of the King, and yet all one ligeance due to the King. So in 42. Edward. 3. fol. 2. where it is first said, the ligeance of England, it is afterward in the same case called, the ligeance of the King; wherein though they vsed seuerall manner and phrases of speech, yet they intended one and the same ligeance. So in our vsuall Commission of Assise, of Gaole deliuerie, of Oyer and Terminer, of the Peace, &c. power is giuen to execute iustice secundum legem & consuetudinem regni nostri Angliæ: and yet Littleton. lib. 2. in his chapter of Villenage, fol. 43. in disabling of a man that is attainted in a Premunire, saith, That the same is the Kings Law: and so doth the Register in the writ of ad iura regia style the same.

The reasons wherefore the King by iudgement of law hath a politique capacitie.

The reasons and causes wherefore by the policie of the Law the King is a body politique, are three, viz. 1. causa maiestatis, 2. causa necessitatis, and 3. causa vtilitatis. First, causa maiestatis, the King cannot giue or take but by matter of Record for the dignitie of his person. Secondly, causa necessitatis, as to auoyde the attainder of him that hath right to the Crowne, as it appeareth in 1. Hen. 7. 4. least in the interim there should be an Interregnum, which the Law will not suffer. Also by force of this politique capacitie, though the King bee within age, yet may hee make Leases and other Graunts, and the same shall binde him: otherwise his reuenue should decay, and the King should not bee able to reward seruice, &c. Lastly, causa vtilitatis, as when lands and possessions discend from his collaterall Auncestors, being Subiects, as from the Earle

of

of March, now the King, now is the King seised of the same in iure coronæ in his politique capacitie: for which cause the same shall goe with the crowne: and therefore, albeit Queene Elizabeth was of the halfe blood to Queene Marie, yet she in her body politique enioyed all those fee simple lands, as by the Law shee ought; and no collaterall cousin of the whole blood to Queene Marie ought to haue the same. And these are the causes wherefore by the policie of the Law the King is made a body politique: so as for these special purposes the law makes him a body politique, immortall, and inuisible, whereunto our ligeance cannot appertaine. But to conclude this point, our ligeance is due to our naturall liege Soueraigne, discended of the blood royall of the Kings of this Realme. And thus much of the first generall part de Ligeantia.

The 2. generall part. *De Legibus.*

Now followeth the second part, de Legibus, wherein these parts were considered: First, That the ligeance or faith of the Subiect is due vnto the King by the law of Nature: Secondly, That the Law of Nature is part of the Law of England: Thirdly, That the Law of Nature was before any iudiciall or municipall Law: Fourthly, That the Law of Nature is immutable.

The Law of Nature.

The Law of Nature is that which God at the time of creation of the nature of man infused into his heart, for his preseruation and direction: and this is Lex æterna, the morall Law, called also the Law of Nature: and by this Law, written with the finger of God in the heart of man, were the people of God a long time gouerned, before that Law was written by Moyses, who was the first Reporter or Writer of the Law in the world. The Apostle in the second chapter to the Romans saith, Cum enim gentes quæ legem non habẽt naturaliter ea quæ legis sunt faciunt. And this is within that commandement of the morall law, honora patrem, which doubtlesse doth extend to him that is pater patriæ. And the Apostle saith, Omnis anima potestatibus sublimioribꝰ subdita sit. And these be the words of the great Diuine, Hoc Deus in sacris Scripturis inbet, hoc lex naturæ dictat, vt quilibet subditus obediat superiori. And Aristotle, Natures Secretarie, lib. 5. Æthicorũ saith, That ius naturale est, quod apud omnes homines eandem habet potentiam. And herewith doe agree Bracton lib. 1. cap. 5. and Fortescue, cap. 8. 12. 13. & 16. Doctor & Student, cap. 2. & 4. And the reason hereof is, for that God and Nature is one

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to all, and therefore the law of God and Nature is one to all. By this law of Nature is the faith, ligeance, and obedience of the ſubiect due to his Soueraigne or ſuperiour. And Ariſtotle 1. Politicorum proueth, that to commaund and to obey is of nature, and that magiſtracie is of nature: for whatſoeuer is neceſſarie, and profitable for the preſeruation of the ſocietie of man, is due by the law of nature: but magiſtracie and gouernement are neceſſarie and profitable for the preſeruation of the ſocietie of man: therefore magiſtracie and gouernement are of nature. And herewith accordeth Tully lib. 3. de legibus, Sine imperio nec domus vlla, nec ciuitas, nec gens, nec hominum vniuerſum genus ſtare, nec ipſe denique mundus poteſt. This law of nature, which indeed is the eternall law of the Creator, infuſed into the heart of the creature at the time of his creation, was two thouſand yeares before any law written, and before any iudiciall or municipall lawes. And certaine it is, that before iudiciall or municipall lawes were made, Kings did decide cauſes according to naturall equitie, and were not tyed to any rule or formalitie of law, but did dare iura. And this appeareth by Forteſcue cap. 12. & 13. and by Virgil that Philoſophicall Poet 7. Ænead:

Hoc Priami geſtamen erat, cum iura vocatis
More daret populis.

And 5. Ænead:

——Gaudet regno Troianus Aceſtes,
Indicitq; forum & patribus dat iura vocatis.

And Pomponius lib. 2. cap. de origine iuris, affirmeth, that in Tarquinus Superbus time, there was no Ciuile law written, and that Papirius reduced certaine obſeruations into writing, which was called Ius ciuile Papirianum. Now the reaſon wherefore Lawes were made and publiſhed, appeareth in Forteſcue cap. 13. and in Tully lib. 2. officiorum: at cum ius æquabile ab vno viro homines non conſequerentur, inuentæ ſunt leges. Now it appeareth by demonſtratiue reaſon, that ligeance, faith, and obedience of the ſubiect to the Soueraigne, was before any municipall or iudiciall Lawes: 1. For that gouernement and ſubiection were long before any municipall or iudiciall lawes: 2. For that it had beene in vaine to haue preſcribed lawes to any, but to ſuch as ought obedience, faith, and ligeance before, in reſpect whereof they were bound to obey and obſerue them: Fruſtra enim

feruntur leges nisi subditis & obedientibus. Seeing then that faith, obedience, and ligeance, are due by the law of nature, it followeth that the same cannot be changed or taken away: for albeit iudiciall or municipall lawes haue inflicted and imposed in seuerall places, or at seuerall times, diuers and seuerall punishments and penalties for breach or not obseruance of the law of nature (for that law onely consisted in commaunding or prohibiting, without any certaine punishment or penaltie) yet the very law of nature it selfe, neuer was nor could be altered or changed. And therefore it is certainely true, that Iura naturalia sunt immutabilia. And herewith agreeth Bracton lib. 1. cap. 5. and Doctour and Student, cap. 5. & 6. And this appeareth plainely and plentifully in our Bookes.

If a man hath a ward by reason of a Seigniorie, and is outlawed he forfeiteth the wardship to the King: but if a man hath the wardship of his owne sonne or daughter, which is his heire apparant, and is outlawed, her doth not forfeit this wardship: for nature hath annexed it to the person of the father, as it appeareth in 33. H. 6. 55. & bonus rex nihil bono patre differt, & patria dicitur a patre, quia habet communem patrem, qui est pater patriæ. In the same manner, maris & fœminæ coniunctio est de iure naturæ, as Bracton in the same booke and chapter, and S. Germin in his booke of the Doctor and Student, cap. 5. doe hold. Now if he that is attainted of Treason or Felonie, bee slaine by one that hath no authoritie, or executed by him that hath authoritie, but pursueth not his warrant, in this case his eldest sonne can haue no appeale, for he must bring his appeale as heire, which being ex prouisione hominis he loseth it by the attainder of his father: but his wife (if any he haue) shall haue an appeale, because shee is to haue her appeale as wife, which she remaineth notwithstanding the attainder, because maris & fœminæ coniunctio is de iure naturæ, and therefore (it being to be intended of true and right matrimonie) is indissoluble: and this is proued by the booke in 33. H. 6. fol. 57. So if there be mother & daughter, & the daughter is attainted of felonie, now cannot she be heire to her mother for the cause aforesaid, yet after her attainder if she killeth her mother, this is parricide and petit treason: for yet she remaineth her daughter, for that is of nature: and herewith agreeth 21. E. 3. 17. b. If a man be attainted of Felonie or Treason, he hath lost the kings legall protection, for he is thereby vtterly disabled to sue any action reall or personall (which is a greater disabilitie than an alien in league hath) and yet such a person so attainted hath not lost that pro-

protection which by the law of nature is giuen to the king, for that is indelebilis & immutabilis; and therefore the king may protect and pardon him, and if any man kill him without warrant, hee shall be punished by law as a manslayer; and thereunto accordeth, 4. Ed. 4. and 35. H. 6. 57. 2. Ass. pl. 3. By the statute of 25. Ed. 3. ca. 22. a man attainted in a Præmunire, is by expresse words out of the kings protection generally: & yet this extendeth onely to legal protection, as it appeareth by Littl. fo. 43. for the Parliament could not take away that protection which the law of nature giueth vnto him: and therefore notwithstanding that statute, the king may protect and pardon him. And though by that statute it was further enacted, That it should be done with him as with an enemie, by which words any man might haue slaine such a person (as it is holde in 24. H. 8. tit' Coron Br. 197.) vntil the statute made an 5. El. cap. 1. yet the king might protect & pardon him. A man outlawed is out of the benefit of the municipal law: for so saith F. N. B. 161. Vtlagatus est quasi extra legem positus: and Bracton lib. 3. tract. 2. cap. 11. saith, that caput gerit lupinum; yet is he not out either of his naturall ligeance, or of the kings naturall protection, for neither of them is tyed to municipal lawes, but is due by the law of nature, which (as it hath bin said) was long before any iudicial or municipall lawes. And therefore if a man were outlawed for felonie, yet was he within the kings naturall protection, for no man but the Sherif could execute him, as it is adiudged in 2. lib. Ass. pl. 3. Euery subiect is by his naturall ligeance bound to obey and serue his Soueraigne, &c. It is enacted by the Parliament of 23. H. 6. that no man should serue the king as Sherife of any Countie aboue one yeare, and that, notwithstanding any clause of non obstante to the contrary, that is to say, notwithstanding that the king should expressly dispense with the said statute: howbeit it is agreed in 2. H. 7. that against the expresse purview of that act the king may by a speciall non obstante dispence with that act; for that the act could not bar the king of the seruice of his subiect, which the law of nature did giue vnto him. By these and many other cases that might be cited out of our bookes, it appeareth, how plentifull the authorities of our lawes be in this matter. Wherefore to conclude this point (and to exclude all that hath beene or could bee obiected against it) if the obedience and ligeance of the subiect to his Soueraigne, bee due by the law of nature, if that law bee parcell of the lawes as well of England, as of all other nations, and is immutable, and that Postnati and wee of England are vnited by birthright

in obedience and ligeance (which is the true cauſe of naturall ſubiection) by the law of nature. It followeth that Caluin the plaintife being borne vnder one ligeance to one King, cannot be an alien borne, And there is great reaſon, that the law of nature ſhould direct this caſe, wherein fiue naturall operations are remarkable: Firſt, the King hath the crowne of England by birthright, being naturally procreated of the blood royall of this Realme: Secondly, Caluin the plaintife naturalized by procreation and birthright, ſince the diſcent of the crowne of England: Thirdly, ligeance and obedience of the ſubiect to the Soueraigne, due by the law of nature: Fourthly, protection and gouernment due by the law of nature: Fiftly, this caſe, in the opinions of diuers, was more doubtfull in the beginning, but the further it proceeded, the cleerer and ſtronger it grew; and therefore the doubt grew from ſome violent paſſion, and not from any reaſon grounded vpon the law of nature, quia quanto magis violentus motus (qui fit contra naturam) appropinquat ad ſuum finem, tanto debiliores & tardiores ſunt eius motus; ſed naturalis motus, quanto magis appropinquat ad ſuum finem, tanto fortiores & velociores ſunt eius motus. Hereby it appeareth how weake the obiection grounded vpon the rule of Quando duo iura concurrunt in vna perſona, &c. is: For that rule holdeth not in perſonall things, that is, when two perſons are neceſſarily & ineuitably required by law (as in the caſe of an alien borne there is:) and therefore no man will ſay, that now the King of England can make warre or league with the King of Scotland, & ſic de cæteris: And ſo in caſe of an alien borne, you muſt of neceſſitie haue two ſeuerall ligeances to two ſeuerall perſons. And to conclude this point concerning lawes, Non aduerſatur diuerſitas regnorum ſed regnantium, non patriarum ſed patrum patriarum, non coronarum ſed coronatorum, non legum municipalium ſed regum maieſtatum. And therefore thus were directly and cleerely answered as well the obiections drawne from the ſeueraltie of the kingdomes, ſeeing there is but one head of both, & the Poſtnati and is ioyned in ligeance to that one head, which is copula and tanquam oculus of this caſe, as alſo the diſtinction of the lawes, ſeeing that ligeance of the ſubiects of both kingdomes, is due to their Soueraigne by one law, and that is the law of nature.

The 3. generall part, concerning both kingdomes.

For the third, It is firſt to bee vnderſtood, that as the law hath wrought foure vnions, ſo the law doth ſtill make foure ſeparations. The firſt vnion is of both kingdomes vnder one naturall liege ſoueraigne King, and ſo acknowledged by the act of Parli-

Parliament of recognition. The ſecond is an vnion of ligeance and obedience of the ſubiects of both kingdomes, due by the law of nature to their Soueraigne: And this vnion doth ſuffice to rule and ouer-rule the caſe in queſtion: and this in ſubſtance is but a vniting of the hearts of the ſubiects of both kingomes one to another, vnder one head and ſoueraigne. The 3. vnion is an vnion of protection of both kingdomes, equally belonging to the ſubiects of either of them: And therefore the two firſt arguments or obiections drawne from two ſuppoſed ſeuerall ligeances, were fallacious, for they did diſiungere coniungenda. The fourth vnion and coniunction is, of the three Lyons of England, and that one of Scotland, vnited and quartered in one eſcucheon.

Concerning the ſeperations yet remaining: First, England and Scotland remaine ſeuerall and diſtinct kingdomes: 2. They are gouerned by ſeuerall iudiciall or municipall lawes: 3. They haue ſeuerall diſtinct and ſeparat Parliaments: 4. Each kingdome hath ſeuerall Nobilities: For albeit a Poſtnatus in Scotland, or any of his poſteritie, be the heire of a Noble man of Scotland, and by his birth is ligitimated in England, yet he is none of the Peeres or Nobilitie of England, for his naturall ligeance and obedience, due by the law of nature, maketh him a ſubiect, and no alien within England: but that ſubiection maketh him not noble within England, for that Nobilitie had his originall by the Kings creation, and not of nature. And this is manifeſted by expreſſe authorities, grounded vpon excellent reaſons in our bookes. If a Baron, Vicount, Earle, Marques, or Duke of England, bring any action real or perſonall, and the defendant pleadeth in abatement of the writ, that hee is no Baron, Vicoſit, Earle, &c. and thereupon the demaundant or plaintife taketh iſſue; this iſſue ſhall not bee tryed by Jurie, but by the record of Parliament, whether hee or his auncеſtor, whoſe heire hee is, were called to ſerue there as a Peere, and one of the Nobilitie of the Realme. And ſo are our bookes adiudged in 22. Aſſ. 24. 48. Ed. 3. 30. 35. H. 6. 40. 20. Eliz. Dyer 360. Vide in the 6. part of my Reports, in the Counteſſe of Rutlands caſe. So as the man, that is not de iure a Peere, or one of the Nobilitie, to ſerue in the vpper houſe of the Parliament of England, is not in the legall proceedings of law accounted Noble within England. And therefore if a Countee of Fraunce, or Spaine, or any other ſoyraine kingdome, ſhould come into England, hee ſhould not here ſue, or bee ſued, by the name of Countee, &c. for that hee is none of the Nobles that are members of the

vpper houſe of the Parliament of England: and herewith agree the booke caſes of 20. Ed. 6. and 11. Ed. 3. tit. Brie 473. Like law it is, and for the ſame reaſon, of an Earle or Baron of Ireland, he is not any Peere, or of the Nobilitie of this Realme: and herewith agreeth the booke in 8. R. 2. tit. Proces pl. vltim. where in an action of Debt proces of Outlawrie was awarded againſt the Earle of Ormond in Ireland, which ought not to haue been, if he had been noble here. Vide Dier 20. Eliz. 360.

But yet there is a diuerſitie in our bookes worthy of obſeruation, for the higheſt and loweſt dignities are vniuerſall: for if a King of a forraine nation come into England, by the leaue of the King of this Realme (as it ought to bee) in this caſe he ſhall ſue and bee ſued by the name of a King: and herewith agreeth 11. E. 3. tit. Briefe 473. where the caſe was, that Alice, which was the wife of R. de O. brought a writ of Dower againſt John Earle of Richmond, & the writ was, Præcip Iohañ Comiti Richmond' cuſtodi terræ & hæredis of William the ſonne of R. de O. the tenãt pleaded, That he is Duke of Brittain, not named Duke, iudgement of the writ? But it is ruled, that the writ was good, for that the dukedome of Brittaine was not within the Realme of England. But there it is ſaid, that if a man bring a writ againſt Edward Baliol, and name him not King of Scotland, the writ ſhall abate for the cauſe aforeſaid. And hereof there is a notable preſident in Fleta lib. 2. cap. 14. where, treating of the iuriſdiction of the Kings Court of Marſhalſey, it is ſaid, Et hæc omnia ex officio ſuo licitè facere poterit (s. Seneſchallus aulæ hoſpicij Regis) non obſtante alicuius libertate, etiam in alieno regno dum tamen reus in hoſpitio Regis poterit inueniri, ſecundum quod contigit Pariſ. anñ 14. Ed. 1. de Engelramo de Nogent capto in hoſpitio Regis Angliæ (ipſo rege tunc apud Pariſiam exiſtente) cum diſcis argenti furatis recentèr ſuper facto, rege Franciæ tũc præſente, & vnde licet curia regis Frãciæ de prædicto latrone per caſtellanũ Pariſ. petita fuerit, habitis hic & inde tractatibus, in conſilio Regis Franciæ tandem conſideratũ fuit, qd Rex Angliæ illa regia prærogatiua & hoſpitij ſui priuilegio vteretur & gauderet, qui, corã Roberto Fitz-Iohn milite tunc hoſpitij Regis Angliæ Seneſchallo de latrocinio cõuictus, per cõſideratione eius Curiæ fuit ſuſpenſus in patibulo Scī Germani de Pratis. Which proueth, that though the king be in a forraine kingdome, yet he is iudged in law a king there. The other part of the ſaid diuerſitie, is proued by the booke caſe 20. Ed. 4. fol. 6. where, in a writ of Debt brought by Sir John Douglas Knight, againſt Elizab. Wolfoꝛd, the defendant demaunded iudgement of the writ, for that

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the plaintife was an Earle of Scotland, but not of England, and that our Soueraigne Lord the King had graunted vnto him safe conduct not named by his name of dignitie, iudgement of the writ, &c. And there Iustice Littleton giueth the rule: the plaintife (saith he) is an Earle in Scotland, but not in England; and if our Soueraigne Lord the King grant to a Duke of France a safe conduct to marchandize, and to enter into his Realme, if the Duke commeth and bringeth marchandise into this land, and is to sue an action here, he ought not to name himselfe Duke, for he is not a Duke in this land, but only in France. And these be the very words of that booke case: out of which I collect three things. First, that the plaintife was named by the name of a Knight, whersoeuer he receiued that degree of dignitie, Vide 7.H.6.14. accord. 2. That an Earle of another kingdom or nation is no Earle (to be so named in legal proceedings) within this Realme: and herewith agreeth the booke of 11.Ed.3. the Earle of Richmonds case before recited. 3. That albeit the king by his letters Patents of safe conduct doe name him Duke, yet that appellation maketh him no Duke, to sue or be sued by that name within England: So as the law in these points (apparant in our books being obserued, and rightly vnderstood, it appeareth how cautelesse their feare was, that the adiudging of the plaintife to be no alien, should make a confusion of the Nobilities of either kingdome.

Now are we in order come to the fourth noune (which is the 4. generall part) Alienigena; wherein 6. things did fall into consideration. ¶ 1. Who was Alienigena, an alien borne by the lawes of England. ¶ 2. How many kinde of aliens borne there were. ¶ 3. what incidents belonged to an alien borne. ¶ 4. The reason why an alien is not capable of inheritance or freehold within England. ¶ 5. Examples, resolutions, and iudgements, reported in our bookes in all succession of ages, proouing the plaintife to be no alien. ¶ 6. Demonstratiue conclusions vpon the premisses, approuing the same. The 4. generall part. *De Alienigena.*

1 An Alien is a subiect that is borne out of the ligeance of the king, and vnder the ligeance of another, and can haue no real or personall action for or concerning land, but in euery such action the tenant or defendant may plead, that he was borne in such a countrey, which is not within the ligeance of the king, and demand iudgement if he shall be answered. And this is in effect the description which Littleton himselfe maketh, lib.2.cap. Villeñ fo. 43. Alienigena est alienæ gentis seu alienæ ligeantiæ, qui etiam dicitur Who is an Alien.

tur peregrinus, alienus, exoticus, extraneus, &c. Extraneus eſt ſubditus qui extra terram, i. poteſtatem regis natus eſt. And the vſuall & right pleading of an alien borne, doth liuely and truly deſcribe and expreſſe what he is. And therein two things are to bee obſerued: 1, That the moſt vſual and beſt pleading in this caſe is, both exclusiue and inclusiue, viz. extra ligeantiam domini Regis, &c. & infra ligeantiam alterius Regis, as it appeareth in 9. Ed. 4. 7. Booke of Entries, fol. 244. &c. which cannot poſſibly bee pleaded in this caſe, for two cauſes: First, for that one King is Soueraigne of both kingdomes: 2, One ligeance is due by both to one Soueraigne, and in caſe of an alien, there muſt of neceſſitie be ſeuerall Kings, and ſeuerall ligeances. Secondly, no pleading was euer extra regnum, or extra legem, which are circumſcribed to place, but extra ligeantiam, which (as it hath beene ſaid) is not locall or tied to any place.

It appeareth by Bracton lib. 3. tract. 2. cap. 15. fol. 134. that Canutus the Danish king, hauing ſetled himſelfe in this kingdome in peace, kept notwithſtanding (for the better continuance thereof) great armies within this Realme. The Peeres and Nobles of England diſtaſting this gouernement, by armes and armies (Odimus accipitrem quia ſemper viuit in armis) wiſely and politikly perſwaded the king, that they would prouide for the ſafety of him and his people, & yet his armies carrying with them many inconueniences, ſhould bee withdrawne: And therefore offered, that they would conſent to a law, that whoſoeuer ſhould kill an alien, and be apprehended, and could not acquit himſelfe, hee ſhould bee ſubiect to iuſtice: but if the manſlayer fled, and could not bee taken, then the towne where the man was ſlaine ſhould forfeit 66. markes vnto the King: and if the towne were not able to pay it, then the Hundred ſhould forfeit and pay the ſame vnto the Kings treaſure: whereunto the King aſſented. This law was penned: quicunque occiderit Francigenam, &c. not excluding other aliens, but putting Francigena a Frenchman for an example, that others muſt be like vnto him, in owing ſeuerall ligeance to a ſeuerall Soueraigne, that is, to be extra ligeantiam Regis Angliæ, and infra ligeantiam alterius Regis. And it appeareth before out of Bracton and Fleta, that both of them vſe the ſame examples (in deſcribing of an alien) ad fidem Regis Franciæ. And it was holden, that except it could bee prooued, that the partie ſlaine was an Engliſh man, that hee ſhould bee taken for an alien, and this was called Engleiherie, Engleſheria, that is, a proofe that the partie ſlaine was an Engliſhman. (Hereupon

Canutus

Canutus preſently withdrew his armies, and within a while after loſt his crown, and the ſame was reſtored to his right owner. The ſaid law of Engleſherie continued vntil 14. Ed. 3. ca. 4. and then the ſame was by act of Parliament ouſted and aboliſhed. So amongſt the lawes of William the firſt, publiſhed by Maſter Lambert, fol. 125. Omnis Francigena (there put for example as before is ſaid, to expreſſe what maner of perſon alienigena ſhould be) qui tempore Edwardi propinqui noſtri fuit particeps legum & conſuetudinum Anglorum (that is made denizen) quod dicunt ad ſcot & lot perſoluat ſecundum legem Anglorum.

How many kinde of aliens there be.

Euery man is either Alienigena, an alien borne, or ſubditus, a ſubiect borne. Euery alien is either a friend that is in league, &c. or an enimie that is in open warre, &c. Euery alien enemie is either pro tempore, temporarie for a time, or perpetuus, perpetual, or ſpecialiter permiſſus, permitted eſpecially. Euery ſubiect is either natus, borne, or datus, giuen or made: And of theſe briefely in their order. An alien friend, as at this time a German, a Frenchman, a Spaniard, &c. (all the Kings and Princes in Chriſtendome being now in league with our Soueraigne, but a Scot being a ſubiect, cannot bee ſaid to bee a friend, nor Scotland to bee ſolum amici) may by the common law haue, acquire, and get within this Realme, by gift, trade, or other lawfull meanes, any treaſure or goods perſonall whatſoeuer, as well as any Engliſhman, and may maintaine any action for the ſame: But lands within this Realme or houſes (but for their neceſſary habitation onely) alien friends cannot acquire or get, nor maintaine any action real or perſonall for any land or houſe, vnleſſe the houſe be for their neceſſarie habitation. For if they ſhould be diſabled to acquire and maintaine theſe things, it were in effect to denie vnto them trade and traffique, which is the life of euery Iſland. But if this alien become an enemie (as all alien friends may) then is hee vtterly diſabled to maintaine any action, or get any thing within this Realme. And this is to bee vnderſtood of a temporarie alien, that being an enemie, may bee a friend, or being a friend may bee an enemie. But a perpetuall enemie (though there bee no warres by fire and ſword betweene them) cannot maintaine any action, or get any thing within this Realme. All Infidels are in law perpetui inimici, perpetuall enemies (for the law preſumes not that they will bee conuerted, that being remota potentia, a remote poſſibilitie) for betweene them, as with the diuels, whoſe ſubiects they bee, and the Chriſtian, there is perpetuall hoſtili-

hoſtilitie, and can be no peace: for as the Apoſtle ſaith, 2. Cor. 15. quæ autem conuentio Chriſti ad Belial, aut quæ pars fideli cũ infideli, and the law ſaith, Iudæo Chriſtianum nullum ſeruiat mancipium, nefas enim eſt quem Chriſtus redemit blaſphemum Chriſti in ſeruitutis vinculis detinere. Regiſter 282. Infideles ſunt Chriſti & Chriſtianorum inimici. And herewith agreeth the booke in 12. H. 8. fol. 4. where it is holden, that a Pagan cannot haue or maintaine any action at all.

By what lawes kingdoms gotten by conqueſt &c. ſhalbe gouerned.

And vpon this ground there is a diuerſitie betweene a conqueſt of a kingdome of a Chriſtian king, and the conqueſt of a kingdome of an Infidel: for if a king come to a Chriſtian kingdome by conqueſt, ſeeing that he hath vitæ & necis poteſtatem, hee may at his pleaſure alter and change the Lawes of that kingdome, but vntill hee doth make an alteration of thoſe lawes, the ancient lawes of that kingdome remaine. But if a Chriſtian king ſhould conquer a kingdome of an Infidel, and bring them vnder his ſubiection, there ipſo facto the lawes of the Infidel are abrogated, for that they be not onely againſt Chriſtianitie, but againſt the law of God and of nature, contained in the Decalogue. And in that caſe, vntill certaine lawes bee eſtabliſhed amongſt them, the king by himſelfe and ſuch Iudges as he ſhall appoint, ſhall iudge them and their cauſes, according to naturall equitie, in ſuch ſort as kings in auncient time did within their kingdomes, before any certaine municipall lawes were giuen, as before hath beene ſaid. But if a king hath a kingdome by title of diſcent, there, ſeeing by the lawes of that kingdome hee doth inherit the kingdome, he cannot change thoſe lawes of himſelfe, without conſent of Parliament. Alſo if a king hath a Chriſtian kingdome by conqueſt, as King Henry the ſecond had Ireland, after king John had giuen vnto them, being vnder his obedience and ſubiection, the lawes of England for the gouernement of that countrey, no ſucceeding King could alter the ſame without Parliament. And in this caſe whiles the Realme of England, and that of Ireland were gouerned by ſeuerall lawes, any that was borne in Ireland was no alien to the realme of England. In which preſident of Ireland 3. things are to bee obſerued: 1. That then there had bin two diſcents, one from H. the 2. to King Rich. the 1. and from Rich. to King John, before the alteration of the lawes: 2. That albeit Ireland was a diſtinct Dominion, yet the title thereof being by conqueſt the ſame by iudgement of law might by expreſſe words bee bound by the parliaments of England: 3. That albeit no reſer-

Ireland.

uation

uation were in king Johns Charter, yet by iudgement of law a writ of Error did lye in the K. Bench in England, of an erroneous iudgement in the kings benth of Ireland. Furthermore, in the caſe of the conqueſt of a Chriſtian kingdome, as well thoſe that ſerued in warres at the conqueſt, as thoſe that remained at home for the ſafetie and peace of their countrey, & other the kings ſubiects, as well Antenati as Poſtnati are capable of lands in the kingdome or countrey conquered, and may maintaine any reall action, and haue the like priuiledges and beneſits there, as they may haue in England.

The 3. kind of enemy is, inimicus permiſſus, an enemy that cõmeth into the realme by the kings ſafe cõduct, of which you may reade in the Regiſter fo. 25. Book of Entries Exectione firmæ 7.32. H. 6.23. &c. Now what a ſubiect borne is, appeareth at large by that which hath bin ſaid de ligeantia: & ſo likewiſe de ſubdito dato, of a donaiſon, for that is the right name, ſo called, becauſe his ligitimation is giuẽ vnto him for if you deriue denizen from deins nee, one borne within the obedience or ligeance of the king, thẽ ſuch a one ſhould be all one with a natural borne ſubiect: and it appeareth before out of the lawes of king W. the 1. of what antiquitie the making of denizens by the K. of England hath bene.

3 There be regularly vnleſſe it be in ſpecial caſes) 3. incidents to a ſubiect borne: 1. That the parents be vnder the actual obedience of the king: 2. That the place of his birth bee within the kings dominion: And 3. the time of his birth is chiefely to be cõſidered, for he cannot be a ſubiect borne of one kingdom, that was borne vnder the ligeance of a King of another kingdome, albeit afterwards one kingdome diſcend to the King of the other. For the firſt, it is termed actuall obedience, becauſe though the king of England hath abſolute right to other kingdoms or dominiõs as France, Acquitaine, Normandy, &c. yet ſeeing the king is not in actuall poſſeſſion thereof, none borne there ſince the crowne of England was out of actuall poſſeſſion thereof, are ſubiects to the K. of England. 2. The place is obſeruable, but ſo, as many times ligeance or obedience, without any place within the K. dominions may make a ſubiect borne, but any place within the K. dominions without obedience, can neuer produce a naturall ſubiect. And therefore if any of the K. embaſſadors in forrein natiõs, haue children there of their wiues being Engliſh women, by the common lawes of England they are natural borne ſubiects, & yet they are borne out of the K. dominions. But if enemies ſhould come into any of the kings dominions, & ſurpriſe any caſtle or fort, and poſſeſſe

Of the incidents to an alien.

poſſeſſe the ſame by hoſtilitie, and haue iſſue there, that iſſue is no ſubiect to the King, though hee be borne within his dominions, for that he was not borne vnder the Kings ligeance or obedience. But the time of his birth is of the eſſence of a ſubiect borne: for he cannot be a ſubiect to the King of England, vnleſſe at the time of his birth he was vnder the ligeance and obedience of the King. And that is the reaſon that Antenati in Scotland (for that at the time of their birth they were vnder the ligeance and obedience of another King) are aliens borne, in reſpect of the time of their birth.

Wherefore an alien borne is not capable of lands.

4 It followeth next in courſe to ſet downe the reaſons, wherefore an alien borne is not capable of inheritance within England; and that he is not for three reaſons: 1. The ſecrets of the Realme might thereby be diſcouered: 2. The reuennes of the Realme (the ſinewes of warre, and ornament of peace) ſhould be taken and enioyed by ſtrangers borne: 3. It ſhould tend to the deſtruction of the Realme. Which three reaſons doe appeare in the ſtatutes of 2. H. 5. cap. and 4. H. 5. cap. vltimo. But it may be demaunded, Wherein doth that deſtruction conſiſt? whereunto it is anſwered: Firſt, it tends to deſtruction tempore belli; for then ſtrangers might fortifie themſelues in the heart of the Realme, and bee ready to ſet fire on the Common-wealth, as was excellently ſhadowed by the Troian horſe in Virgils 2. Booke of the Eneads, where a very few men in the heart of the citie, did more miſchiefe in few houres, than 5. thouſand men without the walls in ten yeares: Secondly tempore pacis, for ſo might many aliens borne get a great part of the inheritance and freehold of the Realme, whereof there ſhould follow a failer of iuſtice (the ſupporter of the Common-wealth) for that aliens borne cannot bee returned of Iuries for the tryall of iſſues betweene the king and the ſubiect, or betweene ſubiect and ſubiect. And for this purpoſe and many other, ſee a Charter (worthy of obſeruation) of K. E. 3. written to Pope Clement, Datum apud Weſt. 26. die Sept. anñ regni noſtri Franciæ 4. regni Angliæ 17.

Examples and authorities in law.

5 Now are we come to the examples, reſolutions, and iudgements of former times: wherein two things are to be obſerued. Firſt, how many caſes in our bookes doe ouer-rule this caſe in queſtion (for vbi eadem ratio ibi idem ius, & de ſimilibus idem eſt iudicium:) 2. That for want of an expreſſe text of law in terminis terminantibus, and of examples and preſidents in like caſes (as was obiected by ſome) wee are driuen to determine the queſtion by naturall reaſon: for it was ſaid, Si ceſſet lex ſcripta id cuſtodiri opor-

oportet quadmoribus & consuetudine inductum est, & si qua in re hoc deficeret, recurrendum esset ad rationem. But that receiued, is thus foldly answered: First, that there is no such rule in the common or civile Lawe: but the true rule of the Civile Lawe is: Lex scripta si desit, id custodiri oportet quod moribus & consuetudine inductum est, & si qua in re hoc defecerit, tunc id quod proximum & consequens esse videtur, & si id non appareat, tunc ius quod appellatur, seruari oportet. Secondly, if the said imagined rule bee rightly and legally understood, it may stand for truth: for if you intend ratio for the legall and profound reason of such as by diligent studie and long experience and obseruation are so learned in the Lawes of this Realme, as out of the reason of the same they can rule the case in question, in that sense the said rule is true: but if it bee intended of the reason of the wisest man that professeth not the Lawes of England, then (I say) the rule is absurd and dangerous: for (vt dicitur) in sua arte perito est credendum, & quod quisque norit in hoc se exerciat. Et omnes prudentes illa admittere solent quæ probantur iis qui in sua arte bene versati sunt. Arist. 1. Topicorum, cap. 6. Thirdly, there be multitudes of examples, presidents, iudgements, and resolutions in the Lawes of England, the true and vnstrayned reason whereof doth decide this question, for example: The Dukedome of Aquitaine, whereof Gascoine was parcell, and the Earledome of Poyters come to K. Henry the second by the marriage of Elianor, daughter and heire of William Duke of Aquitaine, and Earle of Poytiers, which discended to Rich. 1. K. Ioh. K. E. 1. E. 2. &c. In 27. lib. Ass. pl. 48. in one case there appeare two iudgements and one resolution to be giuen by the Iudges of both Benches in this case following. The possessions of the Duke of Chesley in time of warre were seised into the kings hands, for that the Duke was an Alien borne: the Duke by petition of right sued to the king, and the effect of his petition was, That before he became Duke of Chesley, he was Duke of Andoner, and whiles he was Duke there, his possessions of that Duchie were likewise seised for the same cause, suppoling that he was an alien borne, wherevpon he sued a former petition, and alledged, that he was borne in Gascoine within the ligeance of the king: which point being put in issue, and found by Iurie to be true, it was adiudged, that he should haue restitution of his possessions generally, without mentioning of any reuersion. After which restitution, one of the

said adiudgings became void the Prior presented, against who
the K. brought a Quare impedit, wherein the K. was barred, & all
this was obtained in the later petitio. And the book saith, That
the Earle of Arundell and Sir Guy de B. came into the Court
of common pleas, and demaunded the opinion of the Iudges of
that court concerning the said case, who resolued, that vpon the
matter aforesaid the King had no right to seise. In which case,
amongst many notable points, this one appeareth to bee adiud-
ged and resolued, that a man borne in Gascoin vnder the Kings
ligeance, was no alien borne, as to lands and possessions within
the Realme of England: and yet England and Gascoine were
seuerall and distinct countries, inherited by seuerall & distinct
titles, & gouerned by seuerall and distinct municipall lawes, as
it appeareth amongst the Records in the Tower. Rot. Vasc. 10.
E. 1. Num. 74. out of the extent of the great Seale of England
and the iurisdiction of the Chauncerie of England, 5. the like
obiection might be made for default of triall, as hath been made
against the plaintife. And where it was said that Gascoin was
no kingdome, and therefore it was not to be matched to the case
in hand, it was answered, that this difference was without a di-
uersitie, as to the case in question: for if the plea in the case at the
barre be good then without question the Prior had bin an alien:
for it might bee said (as it is in the case at the barre) that he
was borne extra ligeantiã regis regniſui Angliæ, & infra ligeantiã dñij
ſui Vaſconiæ, and that they were seuerall dominions, & gouerned
by seuerall lawes: but then such a conceit was not matched, that
a K. hauing seuerall dominions, should haue seuerall ligeances
of his subiects. Secondly, it was answered, that Gascoin was
sometime a kingdome, as likewise Guillain, Burgundy, Bauier,
Britaine, & others were, & now are become dukedomes. Castile,
Arragon, Portugal, Barcelona, &c. were sometime Earledomes,
afterwards dukedomes, & now kingdomes. Bohemia & Polo-
nia were sometime dukedomes, and now kingdoms, & (omitting
many other, & coming neuer home) Ireland was before 32. H. 8.
a Lordship, & now it is a kingdome, & yet the K. of England was
as absolute a Prince and Soueraigne when hee was Lord of
Ireland, as now, when hee is stiled King of the same. 10. Ed. 3.
If an exchange was made between an Englishman and a Gas-
coine of lands in England and in Gascoine, ergo the Gascoyne
was no alien, for then had hee not beene capable of lands in
England. 21. H. 4. the King brought a writ of right of ward
against one Sybill, whose husband was exiled into Gascoine,

Vasconia appellata fuit tempore Caroli magni regnum de Vasconia.

ergo

ergo Gascoine is no parcell or member of England, for exilium est patriæ privatio, notalis foli mutatio, legum nationum amissio. 4. E. 4. 10. The King directed his Writ out of the Chauncerie vnder the great Seale of England, to the Maior of Burdeaux (a Citie in Gascoine) then being vnder the Kings obedience, to certifie, whether one that was outlawed here in England, was at that time in the Kings seruice vnder him in obsequio Regis: whereby it appeareth, that the Kings Writ did runne into Gascoine, for it is the triall that the common Law hath appointed in that case. But as to other cases it is to be vnderstood, that there be two kind of Writs, viz. breuia mandatoria & remedialia, & breuia mandatoria & non remedialia: breuia mandatoria & remedialia, as Writs of Right, of Formidon, &c. of Debt, Trespasse, &c. and shortly, all Writs reall and personall, whereby the party wronged is to recouer somewhat, and to be remedied for that wrong that was offered vnto him, are returnable or determinable in some Court of Iustice within England, and to bee serued and executed by the Shirifes, or other ministers of Iustice within England: and these cannot by any meanes extend into any other Kingdome, Countrey, or Nation, though that it be vnder the Kings actuall ligeance and obedience. But the other kinde of Writs that are mandatorie, and not remediall, are not tyed to any place, but doe follow subiection and ligeance, in what Countrey or nation soeuer the Subiect is, as the Kings Writ to commaund any of his subiects residing in any forraine Countrey to returne into any of the Kings owne Dominions, Sub fide & ligeantia quibus nobis tenemini. And so are the aforesaid mandatorie Writs cited out of the Register of Protection for safetie of body and goods, and requiring, that if any iniurie bee offered, that the same bee redressed according to the Lawes and Customes of that place. Vide le Register, fol. 26. Stamford prærog. cap. 12. fol. 39. sayth, That men borne in Gascoine are inheritable to lands in England. This doth also appeare by diuers acts of Parliament: for by the whole Parliament, 39. E. 3. cap. 16. it is agreed, that the Gascoines are of the ligeance and subiection of the King. Vide 42. Ed. 3. cap. 2. & 28. H. 6. cap. 5. &c.

Guyen was another part of Aquitaine, and came by the same title: and those of Guyen were by act of Parliament in 13. H. 4. not inprinted, ex Rott. parliament' eodē anno, adiudged & declared to be no aliens, but able to possesse and purchase, &c. lands within this Realme. And so doth Stamford take the law, prog. c. 12. f. 39. Guyen. Guienna.

And thus much of the dukedome of Aquitaine, which (together with the Earledome of Poytiers) came to King Henry the second (as hath beene said) by marriage, and continued in the actuall possession of the Kings of England by tenne discents, viz. from the first yeare of King Henry the second, vnto the two and thirtieth yeare of King Henry the 6. which was vpon the verie point of three hundred yeares, within which Duchy there were (as some write) 4. Archbish. 24. Bishop. 15. Earledomes, 202. Baronies, and aboue a thousand Captainships & Bailiwikes: & in all this long time, neither booke case nor record can be found wherein any plea was offered to disable any of them that were born there, by forraine birth, but the contrary hereof directly appeareth by the said booke case of 27. lib. Ass. 48.

Normandy. Normannia. Normandia.

The Kings of England had sometime Normandie vnder actuall ligeance and obedience. This question is then, whether men borne in Normandie, after one King had them both, were inheritable to lands in England: and it is euident by our bookes that they were: for so it appeareth by the declaratory act of 17. E. 2. de prærogariua regis, cap. 12. that they were inheritable to and capable of lands in England: for the purview of that Statute is, Quod rex habebit escaetas de terris Normannorũ, &c. ergo Normanes might haue lands in England: & hoc similiter intelligendum est, si aliqua hæreditas discendat alicui nato in partibus transmarinis, &c. whereby it appeareth, that they were capable of lands within England by discent. And that this act of 17. Ed. 2. was but a declaration of the common Law, it appeareth both by Bracton who (as it hath beene said) wrote in the raigne of Henry the third. lib. 3. tract. 2. c. 1. f. 116. & by Britton, who wrote in 5. E. 1. c. 18 that all such lands as any Norman had either by discent or purchase, escheated to the K. for their treason, in reuolting from their naturall liege Lord and Soueraigne. And therefore Stamford prog. c. 12. fo. 39. expounding the said statute of 17. E. 2. ca. 12. cõcludeth, that by that chapter it should appeare (as if he had said, it is apparant without question) that all men born in Normandy, Gascoin, Guyan, Aniou, & Brittaine (whiles they were vnder actuall obedience) were inheritable within this realm as wel as Englishmen. And the reason thereof was, for that they were vnder one ligeance due to one Soueraigne. And so much (omitting many other authorities) for Normandy: sauing I cãnot let passe the Iles of Iernsey & Gersey, parts & parcels of the dukedom of Normandy, yet remaining vnder the actuall ligeance and obedience of the King. I think no man will doubt, but those that are

Iernsey and Gersey.

borne

borne in Iernſey and Gerſey (though thoſe Iſles are no parcell of the Realme of England, but ſeuerall dominions, enioyed by ſeuerall titles, gouerned by ſeuerall lawes) are inheritable and capable of any lands within the Realme of England. 1. E. 3. fol. 7. Commiſſion to determine the title of lands within the ſayd Iſles, according to the lawes of the Iſles: and Mich. 41. E. 3. in the Treaſurie, Quia negotium prædictum nec aliqua alia negotia de inſula prædict' emergentia non debent terminari niſi ſecundum legem inſulæ prædict' &c. And the Regiſter, fol. 22. Rex fidelibus ſuis de Iernſey & Gerſey. King William the firſt brought this dukedome of Normandy with him, which by fiue diſcents continued vnder the actuall obedience of the kings of England, and in or about the firſt yeare of king John, the Crowne of England loſt the actuall poſſeſſion thereof, vntil king Henry the fift recouered it againe, & left it to K. Henry the firſt, who loſt it in the 28. yere of his raigne: wherein were (as ſome write) one Archbiſhoprieke, & ſix Biſhoprieks, and an hundred ſtrong townes and fortreſſes, beſides thoſe that were waſted in warre. Maud the Empreſſe, the onely daughter and heire to Henry the firſt, tooke to her ſecond huſband Ieffrey Plantagenet, Earle of Anion, Tourain, and Mayne, who had iſſue king H. 2. to who the ſaid earledome by iuſt title diſcended, who, and the kings that ſucceeded him, ſtyled themſelues by the name of Comes Andigauiæ, &c. vntill K. E. 3. became king of all France: and ſuch as were borne within that Earledome, ſo long as it was vnder the actual obedience of the K. of England, were no aliens, but naturall borne ſubiects, & neuer any offer made that we can find to diſable them for forrein birth. But leaue we Normandy & Anion, and ſpeake we of the little, but yet ancient & abſolute kingdome of the Iſle of Manne, as it appeareth by diuers ancient & autentike records; as taking one for many. Artold K. of Manne ſued to K. H. 3. to come into England to conferre with him, and to performe certaine things which were due to K. H. 3. therupon K. H. 3. 28. Decemb. anñ regñ ſui 34. at Wincheſter by his letters patents gaue licence to Artold K. of Manne as followeth: Rex oĩb' ſalut'. Sciatis, qd licentiã dedimus, &c. Artoldo regi de Manne veniẽdo ad nos in Angliã ad loquẽd nobiſc', & ad faciẽd nobis qd facere debet; & ideo vobis mãdam' qd ei regi in veniendo ad nos in Angl', vel ibi morãdo, vel inde redeundo nullum faciatis aut fieri permittatis damnum, iniuriam, moleſtiam, aut grauamen, vel etiam hominibus ſuis quos ſecum ducet, & ſi aliquid eis forisfactum fuerit, id eis ſine dilatione faciatis emendari. In cuius, &c. duratur vſque ad feſtum ſancti Michaelis. wherein two things are

Manne. Mannia.

to be obſerued: 1. That ſeeing that Artold King of Mayne ſued for a licence in this caſe to the King, it proueth him an abſolute King: for that a Monarch or an abſolute Prince cannot come into England without licence of the King, but any ſubiect being in league, may come into this Realme without licence: 2. That the King in his licence doth ſtyle him by the name of a King. It was reſolued in 11.H.8. that where an office was found after the deceaſe of Thomas Earle of Darby, and that hee dyed ſeiſed, &c. of the Iſle of Mayne, that the ſaid office was vtterly voide, for that the Iſle of Mayne, Normandie, Gaſcoine, &c. were out of the power of the Chaunce-rie, and gouerned by ſeuerall Lawes: and yet none will doubt, but thoſe that are borne within that Iſle, are capable and inheritable of lands within the Realme of England. Wales was ſometimes a kingdome, as it appeareth by 19.H.6.fol.6. and by the act of Parliament of 2.H.5.cap.6. but whiles it was a kingdome, the ſame was holden, and within the fee, of the king of England: and this appeareth by our bookes, Fleta lib.1.cap.16. 1.E.3-14. 8.E.3.59. 13.E.3.tit.Iuriſd. 10.H.4.6. Plow.Com.368. And in this reſpect, in diuers auncient Charters, Kings of old time ſtyled themſelues in ſeuerall manners, as King Edgar, Britanniæ Basileus, Etheldredus, totius Albionis dei prouidentia Imperator, Edredus magnæ Britanniæ monarcha, which among many other of like nature I haue ſeene. But by the Statute of 12. E.1. Wales was united and incorporated into England, and made parcell of England in poſſeſſion, and therefore it is ruled in 7.H.4.fol.14. that no protection doth lie quia moratur in Wallia, becauſe Wales is within the Realme of England. And where it is recited in the act of 27.H.8. that Wales was euer parcell of the Realme of England, it is true in this ſence, viz. that before 12.E.1. it was parcell in tenure, and ſince it is parcell of the body of the Realme. And whoſoeuer is borne within the fee of the King of England, though it be in another kingdome, is a naturall borne ſubiect, and capable and inheritable of lands in England, as it appeareth in Plow.Com.126. And therefore thoſe that were borne in Wales before 12.E.1. whiles it was onely holden of England, were capable and inheritable of lands in England.

Wales. Cambria. Wallia.

Now come wee to France and the members thereof, as Calice, Guynes, Tournay, &c. which diſcended to King Edward the third, as ſonne and heire to Iſabel, daughter and heire to Philip le Beau, King of France. Certaine it is, whiles King

France. Gallia. Francia.

King Henry the firſt had both England and the greateſt part of France vnder his actuall ligeance and obedience (for he was crowned King of France in Paris) that they that were then borne in thoſe parts of Fraunce, that were vnder actuall ligeance and obedience, were no aliens, but capable & inheritable to lands in England. And that is proued by the Writs in the Regiſter, fol. 26. cited before. But the inrolment of letters patents of denization in the Exchequer in' originalia, Anno 11. H. 6. with the Lord Treaſurers Remembrancer, was ſtrongly vrged and obiected: for (it was ſaid) thereby it appeareth, that King H. 6. in Anno 11. of his raigne did make denizen one Reynell, borne in Fraunce: whereunto it was anſwered, that it is proued by the ſaid Letters patents, that he was born in France before King Henry the firſt had the actuall poſſeſſion of the Crowne of France, ſo as he was Antenatus: and this appeareth by the ſaid Letters patents, whereby the King granteth, that Magiſter Iohannes Reynell ſeruiens noſter, &c. infra regnum noſtrum Franciæ oriundus, pro termino vitæ ſuæ ſit ligeus noſter, & eodẽ modo teneatur ſicut verus & fidelis noſter infra regnũ Angliæ oriundus, ac quod ipſe terras infra regnũ noſtrum Angliæ ſeu alia dominia noſtra perquirere poſſit & valeat. Now if that Reynell had bin borne ſince Henry the firſt had the quiet poſſeſſion of France (the King being crowned King of France about one yeare before) of neceſſitie hee muſt be an infant of very tender age, and then the K. would neuer haue called him his ſeruant, nor made the Patent (as thereby may be collected) for his ſeruice, nor called him by the name of Magiſter Iohannes Reynell: But without queſtion he was Antenatus, borne before the King had the actuall and reall poſſeſſion of that Crowne.

Callice is a part of the kingdome of Fraunce, and neuer was parcell of the kingdome of England and the kings of England enioyed Callice in & from the raigne of King Edward the third, vntill the loſſe thereof in Q. Maries time, by the ſame title that they had to France. And it is euident by our bookes, that thoſe that were borne in Callice, were capable & inheritable to lands in England, 42. E. 3. cap. 10. Vide 21. H. 7. 33. 19. H. 6. 2. E. 4. 1. 39. H. 6. 39. 21. E. 4. 18. 28. H. 6. 3. b. By all which it is manifeſt, that Callice being parcell of France, was vnder the actuall obedience and commandement of the King, and by conſequent thoſe that were borne there, were naturall borne ſubiects, and no aliens. Callice from the raigne of K. E. 3. vntill the 5. yeare of Qu. Marie, remained vnder the actual obedience of the King of Eng.

Callice. Calecia. Caletum.

Guynes

Guines. Guines also, another part of France, was vnder the like obedience to king Henry the first, as appeareth by 32. H. 6. fo. 4. And

Tournay. Tourney was vnder the obedience of Henry the eight, as it appeareth by 5. Eliz. Dyer, fol. 224. for there it is resolued, that a bastard borne at Tournay, whiles it was vnder the obedience of Henry the eight, was a natural subiect, as an issue borne within this realme by aliens. If then those that were borne at Tournay, Callice, &c. whiles they were vnder the obedience of the king were natural subiects, and no aliens, it followeth, that when the kingdome of France (whereof those were parcels) was vnder the K. obedience, that those that were then borne there, were naturall subiects, and no aliens.

Ireland-Hibernia. Next followeth Ireland, which originally came to the kings of England by conquest; but who was the first conqueror thereof, hath beene a question. I haue seene a Charter made by king Edgar in these words: Ego Edgarus Anglorum [illegible], omniumq; insularum oceani, quæ Brittaniam circumiacent, Imperator & Dominus, gratias ago ipsi Deo omnipotenti regi meo, qui meum imperium sic ampliauit & exaltauit super regnum patrum meorum, &c. mihi cõcessit propitia diuinitas, cum Anglorum imperio omnia regna insularũ oceani, cum suis ferocissimis regibus vsque Noruegiam, maximamque partem Hiberniæ, cum sua nobilissima ciuitate de Dublina, Anglorũ regno subiugare, quapropter & ego Christi gloriam & laudem in regno meo exaltare, & eius seruitium amplificare deuotus disposui, &c. Yet for that it was wholly conquered in the raigne of Henry the second, the honour of the conquest of Ireland, is attributed to him, & his style was, Rex Angliæ, dominus Hiberniæ, dux Normaniæ, dux Aquitaniæ, & comes Andegauiæ, king of England, lord of Ireland, duke of Normandy, duke of Aquitaine, and Earle of Anion. That Ireland is a Dominion separate and diuided from England, it is euident by our bookes, 20. H. 6. 8. Sir Iohn Pilkingtons case, 32. H. 6. 25. 20. Eliz. Dyer 360. Plow. Com. 360. And 2. R. 3. 12. Hibernia habet parliamentum, & faciunt leges, & nostra statuta non ligant eos, quia non mittunt milites ad parliamentum (which is to be vnderstood, vnlesse they be especially named) sed personæ eorum sunt subiecti regis, sicut inhabitantes in Calesia, Gasconia, & Guyan. Wherein it is to be obserued, that the Irish man (as to his subiection) is compared to men borne in Callice, Gascoigne, and Guyan. Concerning their Lawes, Ex rotulis patentium de Anno 11. Regis H. 3. there is a Charter which that king made, beginning in these words: Rex, &c. Baronibus, militibus, & omnibus libere tenentibus L. salutem, satis vt credimus vestra

audiuit discretio, quod quando bonæ memoriæ Iohannes quondã Rex Angliæ pater noster venit in Hiberniam, ipse duxit secũ viros discretos & legis peritos, quorum cõmuni cõsilio & ad instantiam Hibernensiũ statuit & præcepit leges Anglicanas in Hibernia, ita quod leges easdẽ in scripturas redactas reliquit sub sigillo suo ad scaccariũ Dubliñ. So as now the Lawes of England became the proper Lawes of Ireland: and therefore, and because they haue parliaments holden there, whereat they haue made diuers particular lawes concerning that dominion, as it appeareth in 20.H.6.8.& 20.El.Dier 360. and for that they retaine vnto this day diuers of their ancient customes, the booke in 20.H.6.8. holdeth, that Ireland is gouerned by lawes and customes, seperate & diuers from the lawes of England. A voyage royall may be made into Ireland. Vide 11.H.4.7.& 7.E.4.27. which proueth it a distinct dominion. And in Anno 33.reg.El. it was resolued by all the Iudges of England in the case of Ozurke an Irishman, who had committed high Treason in Ireland, that he by the statute of 33.H.8.c.23. might be indited, arraigned, and tried for the same in England, according to the purview of that statute: the words of which statute be, That all Treasons, &c. committed by any person out of the realme of England, shall be from henceforth inquired of, &c. And they all resolued (as afterward they did also in Sir John Perrots case) That Ireland was out of the Realme of England, and that Treasons committed there, were to bee tryed within England by that Statute. In the Statute of 4.H.7.cap.24. of Fines, prouision is made for them that be out of this the land, & it is holden in Pl.Com̃ in Stowels case 375. that he that is in Ireland, is out of this land, and consequently within that prouiso. Might not then the like plea be deuised as well against any person borne in Ireland, as (this is against Caluin that is a Post-nat') in Scotland? For the Irishman is borne extra ligeantiam regis regni sui Angliæ, &c. which bee verba operatiua in the plea: But all men know, that they are naturall borne Subiects, and capable of and inheritable to lands in England. Lastly, to conclude this part with Scotland it selfe: in auncient time part of Scotland (besides Berwick) was within the power and ligeance of the K. of England, as it appeareth by our bookes 42.E.3.2. the L. Beaumonts case, 11.E.3.c.2.&c. & by presidents hereafter mentioned: and that part (though it were vnder the K. of Englãds ligeance and obedience) yet was it gouerned by the lawes of England. Ex rott. Scotiæ, Añ 11.E.3. amongst the records in the Tower of Lõdon, Rex, &c. Constituimus Rich. Talebot Iusticiariũ nostrum villæ Berwici

Scotland. Scotia.

Berwici super Twedam, ac omnium aliarum terrarum nostrarum in partibus Scotiæ, ad faciend omnia & singula quæ ad officium Iusticiarij pertinet secundum legem & consuetudinem regni Scotiæ. And after Anno 16.E.3.ex eodem Rott. Rex Henrico de percey & Richardo de Neuill, &c. volumus & vobis & alteri vestrum tenore præsentium committimus & mandamus, quod hominesnostri de Scotia ad pacem & obedientiam nostram existentes, legibus, libertatibus, & liberis consuetudinibus, quibus ipsi & antecessores sui tempore celebris memoriæ Alexandri quondam Regis Scotiæ rationabiliter vsi fuerunt, vti & gaudere deberent, prout in quibusdam Indenturis, &c. plenius dicit' continetur. And there is a writ in the Register 195. a Dedimus potestatem recipiendi ad fidem & pacem nostram homines de Galloway. Now the case in 42.Edw.3.11. (which was within sixteene yeares of the said Graunt, concerning the Lawes in 16.E.3.) ruleth it, That so many as were borne in that part of Scotland, that was vnder the ligeance of the King, were no aliens, but inheritable to lands in England; yet was that part of Scotland in another kingdome gouerned by seuerall Lawes, &c. And if they were naturall Subiects in that case, when the King of England had but part of Scotland, what reason should there bee, why those that are borne there, when the King hath all Scotland, should not be naturall Subiects, and no aliens? So likewise Berwicke is no part of England, nor gouerned by the Lawes of England; and yet they that haue bin borne there, since they were vnder the obedience of one King, are naturall borne Subiects, and no aliens, as it appeareth in 15. R.2.cap.7.&c. Vide 19.H.6.35.& 39.H.6.39. And yet in all these cases and examples, if this new deuised plea had beene sufficient, they should haue beene all aliens against so many iudgements, resolutions, authorities, and iudiciall presidents, in all successions of ages. There were sometimes in England, whiles the Heptarchie lasted, seuen seuerall crowned Kings of seuen seuerall and distinct kingdomes, but in the end the West Saxons got the Monarchie, and all the other Kings melted (as it were) their Crownes to make one imperiall Diademe for the King of the West Saxons ouer all. Now when the whole was vnder the actuall and reall ligeance and obedience of one K. were any that were borne in any of those seuerall and distinct kingdomes, aliens one to another? Certainly they being borne vnder the obedience of one K. and Soueraigne, were all naturall borne subiects, and capable of and inheritable vnto any lands in any of the said kingdomes.

Berwicke.

In

In the holy Hiſtory reported by S. Luke, Ex dictamine ſpiritus ſancti, cap. 21. & 22. Act. Apoſtolorum it is certaine, that S. Paul was a Iew, borne in Tarſus, a famous Citie of Cilicia: for it appeareth in the ſaid 21. chapter, 39. verſe, by his owne words: Ego homo ſum quidem Iudæus a Tarſo Ciliciæ non ignotæ ciuitatis municeps. And in the 22. chapter, 3. verſe, Ego ſum vir Iudæus natus Tarſo Ciliciæ, &c. and then made that excellent Sermon there recorded, which when the Iews heard, the Text ſaith, verſ. 23. Deiecerunt vocem ſuam dicentes, tolle de terra huiuſmodi, non enim fas eſt eum viuere: vociferantibus autem eis & proijcientibus veſtimenta ſua, & puluerem iactantibus in aerem, Claudius Lyſias the popular Tribune, to pleaſe this turbulent and prophane multitude (though it were vtterly againſt iuſtice and common reaſon) the Text ſaith, Iuſſit Tribunus induci eum in caſtra, 2. flagellis cædi, & 3. torqueri eum (quid ita? inquit) vt ſciret propter quã cauſam ſic acclamarent: and when they had bound Paul with cords, ready to execute the Tribunes vniuſt commaundement, the bleſſed Apoſtle (to auoide vnlawfull and ſharp puniſhment) tooke hold of the law of a heathen Emperor, and ſaid to the Centurion ſtanding by him, Si hominem Romanum & indemnatũ licet vobis flagellare? which when the Centurion heard, he went to the Tribune and ſaid, Quid acturus es? Hic enim homo ciuis Romanus eſt. Then came the Tribune to Paul, and ſaid vnto him: Dic mihi ſi tu Romanus es? at ille dixit, etiam. And the Tribune anſwered, Ego multa ſumma ciuitatẽ hanc conſequutus ſum. But Paul not meaning to conceale the dignitie of his birthright, ſaid, Ego autem & natus ſum: As if he ſhould haue ſaid to the Tribune, You haue your freedome by purchaſe of money, and I (by a more noble meane) by birth-right and inheritance. Protinus ergo (ſaith the Text) diſceſſerunt ab illo qui illum torturi erant, Tribunus quoque timuit poſtquam reſciuit, quia ciuis Romanus eſſet, & quia alligaſſet eum. So as heereby it is manifeſt, that Paul was a Iew, borne at Tarſus in Cilicia, in Aſia Minor, and yet beeing borne vnder the obedience of the Romane Emperour, hee was by birth a Citizen of Rome in Italie in Europa, that is, capable of and inheritable to all priuiledges and immunities of that Citie. But ſuch a plea as is now imagined againſt Caluin might haue made Saint Paul an Alien to Rome. For if the Emperour of Rome had ſeuerall ligeances for euery ſeuerall Kingdome and Countrey vnder his obedience, then might it haue beene ſaid againſt S. Paul that hee was extra ligeantiam imperatoris regni ſui Italiæ, & infra

ligeanti-

ligeantiam imperatoris regni sui Cilicia, &c. But as Saint Paul was Iudæus patria & Romanus priuilegio, Iudæus natione & Romanus iure nationis; So may Calvin say, that he is Scotus patria & Anglus priuilegio, Scotus natione & Anglus iure nationis.

Samaria in Syria was the chiefe Citie of the ten Tribes: but it being vsurped by the King of Syria, and the Iewes taken prisoners, and carried away into captivitie, was after inhabited by the Paynims. Now albeit Samaria of right belonged to Iuda, yet because the people of Samaria were not vnder actuall obedience, by the iudgement of the chiefe Iustice of the whole world they were adiudged Alienigenæ, aliens. For in the Euangelist S. Luke, cap. 17. when Christ had cleansed the ten lepers, Vnus autem ex illis (saith the Text) vt vidit quia mundatus esset regressus est, cum magna voce magnificans deum & cecidit in faciem ante pedes eius gratias agens, & hic erat Samaritanus. Et Iesus respondens dixit, nonne decem mundati sunt, & nouem vbi sunt: Non est inuentus qui rediret & daret gloriam Deo nisi hic alienigena. So as by his iudgement this Samaritane was Alienigena, a Stranger borne, because he had the place, but wanted obedience. Et si desit obedientia non adiuuat locus. And this agreeth with the Diuine, who saith, Si locus saluare potuisset, Satan de cœlo pro sua inobedientia non cecidisset, Adam in paradiso non cecidisset, Sodoma non cecidisset, sed potius in Sodom.

16. Now resteth the first part of this diuision, that is to say, fiue demonstratiue illations or conclusions, drawne plainly and expresslie from the premisses.

1. Euery one that is an alien by birth, may be or might haue beene an enemy by accident: but Calvin could neuer at any time be an enemy by any accident: ergo he cannot be an alien by birth. Vide 33. H. 6. fol. 1. the difference betweene an alien enemie and a subiect traytor, Hostes sunt qui nobis, vel quibus nos bellum decernimus, cæteri proditores, prædones, &c. The maior is apparent, and is proued by that which hath beene said. Et vide Magna Charta cap. 30. 19. E. 3. 6. 9. E. 3. cap. 1. 27. El. 3. cap. 2. 4. H. 5. cap. 7. 14. E. 3. fol. 2. cap. 1. &c.

2. Whosoeuer are borne vnder the naturall ligeance and obedience, due by the Law of Nature to one Soueraigne, are naturall borne Subiects to the same. But Calvin was borne vnder our naturall ligeance and obedience, due by the Law of Nature to our Soueraigne: ergo he is a naturall borne Subiect.

3. who

2. whosoeuer is borne within the Kings power or protection, is no alien: But Caluin was borne vnder the Kings power and protection, ergo he is no alien.

4. Euery stranger borne must at his birth be either amicus or inimicus: But Caluin at his birth could neither bee amicus nor inimicus, ergo he is no stranger borne. Inimicus he cannot be, because he is subditus, and for that cause also hee cannot bee amicus, neither can Scotium bee said to bee solum amici, as hath beene sayd.

5. whatsoeuer is due by the law or constitution of Man, may be altered, but naturall liegeance or obedience of the Subiect to the Soueraigne cannot bee altered: ergo naturall liegeance or obedience to the Soueraigne is not due by the law or constitution of man. Againe, whatsoeuer is due by the Law of Nature, cannot be altered, but liegeance and obedience of the Subiect to the Soueraigne is due by the Law of Nature, ergo it cannot bee altered. It hath beene proued before, that liegeance or obedience of the inferior to the superior, of the subiect to the Soueraign, was due by the law of Nature many thousand yeres before any Law of man was made, which liegeance or obedience (being the onely marke to distinguish a subiect from an alien) could not bee altered, therefore it remaineth still due by the law of Nature. For, Leges naturæ perfectissimè sunt, & immutabiles, humani vero iuris conditio semper in infinitum decurrit, & nihil est in eo quod perpetuo stare possit. Leges humanæ nascuntur, viuunt, & moriuntur.

Lastly, whosoeuer at his birth cannot bee an alien to the king of England, cannot be an alien to any of his subiects of England: But the Plaintife at his birth could be no alien to the K. of England, ergo the Plaintife cannot be an alien to any of the subiects of England. The maior and minor both be propositiones perspicuè veræ. For as to the maior it is to be obserued, That whosoeuer is an alien borne, is so accounted in law in respect of the king: and that appeareth first by the pleading so often before remembred, that he must bee extra ligeantiam Regis, without any mention making of the Subiect. 2. When an Alien borne purchaseth any lands, the king onely shall haue them, though they be holden of a Subiect, in which case the Subiect loseth his Seigniorie. And as it is said in our Bookes, an Alien may purchase ad proficuum Regis, but the Act of Law giueth the Alien nothing: and therefore, if a woman alien marrieth a subiect, shee shall not be endowed, neither shall an Alien be tenant by the Curtesie. Vide 3. H. 6. 55. 4. H. 3. 179. 3. The subiect shall plead that the defendant is an

alien borne for the benefit of the King, that hee vpon office found may ſeize, and 2. that the tenant may yeeld to the King the land, and not to the alien, becauſe the King hath beſt right thereunto. 4. Leagues betweene our Soueraigne and others are the only meanes to make aliens friends, & fœdera percutere, to make leagues, onely and wholly pertaineth to the King. 5. Warres doe make aliens enemies, and bellum indicere belongeth oneely and wholly to the King and not to the ſubiect, as it appeareth in 19. E. 4. fol. 6. 6. The King oneely without the Subiect may make not oneely letters of Safe conduct, but letters patents of Denization, to whom, and how many he will, and enable them at his pleaſure to ſue any of his ſubiects in any action whatſoeuer, reall or perſonal, which the King could not doe without the ſubiect, if the ſubiect had any intereſt giuen vnto him by the Law in any thing concerning an alien borne: nay the Law is more preciſe herein, then in a number of other caſes, of higher nature: for the King cannot grant to any other to make of ſtraungers borne denizens, it is by the Law it ſelfe ſo inſeperably and individually annexed to his royall perſon (as the booke is in 29. H. 7. fol. 8.) For the Law eſteemeth it a point of high Prerogatiue, Ius maieſtatis, & inter inſignia ſummæ poteſtatis, to make aliens borne ſubiects of the Realme, and capable of the lands and inheritances of England in ſuch ſort as any naturall borne ſubiect is. And therefore by the Statute of 27. H. 8. cap. 24. many of the moſt ancient prerogatiues and royall flowers of the crowne, as authoritie to pardon Treaſon, Murther, Manſlaughter, and Felonie, power to make Iuſtices in Eyre, Iuſtices of Aſſiſe, Iuſtices of Peace and Gaole Deliuerie, & ſuch like, hauing beene ſeuered and diuided from the crowne, were againe reunited to the ſame: but authority to make letters of Denization, was neuer mentioned therein to be reſumed, for that neuer any claymed the ſame by any pretext whatſoeuer, being a matter of ſo high a point of Prerogatiue. So as the pleading againſt an alien, the purchaſe by an alien, leagues and warres betweene aliens, denizations and ſafeconducts of aliens: haue aſpect oneely and wholly vnto the King. It followeth therefore, that no man can bee alien to the Subiect that is not an alien to the King. Non poteſt eſſe alienigena corpori, qui non eſt capiti, non gregi qui non eſt Regi.

The authorities of Law cited in this caſe for maintenance of the iudgement, 4. H. 3 tit. Dower. Bracton lib. 5. fol. 427. Fletalib. 6. cap. 47. In temps E. 1. Hinghams Report, 17. Ed. 2. cap. 12. 11. Ed. 3. cap.

cap.2.14.E.3.Statut' de Francis.42.E.3.fo.2.42.E.3.cap.10.22.Lib. Ass.25.13.R.2.cap.2.15.R.2.cap.7.11.H.4.fol.26.14.H.4.fol.19. 13.H.4.Statutum de Guyan.29.H.6.tit.Estopell 48.28.H.6.cap.5. 32.H.6.fo.23.32.H.6.fol.26.Littl.temps E.4.lib.2.ca.Villenage.15. E.4.fol.15.19.E.4.6.22.E.4.cap.8.2.R.3.2.& 12.6.H.8.fol.2.Dyer. 14.H.8.cap.2. No manner of stranger borne out of the kings obeysance, 22.H.8.cap.8. Euery person borne out of the realme of England, out of the kings obeysance, 32.H.8.cap.16. 25.H. 8.cap.15.&c. 4.Edw.6.Plow.Comment.fol.2.Fogasses case, 2.& 3. Ph.& Ma.Dyer 145.Shirleyes case, 5.Eliz.Dyer 224.13.Eliz.ca.7. de Bankrupts: All Commissions auncient and late, for the finding of offices, to intitle the king to the lands of Alien nee: Also all Letters Patents of Denization of auncient and later times, doe proue, That hee is no alien that is borne vnder the kings obedience.

Now are wee come to consider of legall inconueniences: and first of such as haue beene obiected against the plaintife, and secondly of such as should follow if it had beene adiudged against the plaintife. The 5. generall part, Concerning inconueniences.

Of such inconueniences as were obiected against the plaintife, there remaine onely foure to be answered: for all the rest are clearely and fully satisfied before. 1. That if Postnati should bee inheritable to our lawes and inheritances, it were reason that they should bee bound by our Lawes, but Postnati are not bound by our Statute or common Lawes: for they hauing (as it was obiected) neuer so much free-hold or inheritance, cannot bee returned of Iuryes, nor subiect to scot or lot, nor chargeable to Subsidies or Quinzimes, nor bound by any act of Parliament made in England. 2. Whether one bee borne within the Kingdome of Scotland, or no, is not tryable in England, for that it is a thing done out of this Realme, and no Iurie can bee returned for the tryall of any such issue: and what inconuenience should thereof follow, if such pleas that wanted triall should bee allowed (for then all Aliens might imagine the like plea) they that obiected it, left it to the consideration of others. 3. It was obiected, That this innouation was so dangerous, that the certaine euent thereof no man could foresee; and therefore some thought it fit, that things should stand and continue as they had beene in former time, for feare of the worst. 4. If Postnati were by law legitimate in England, it was obiected what inconuenience and confusion should follow,

if (for the punishment of vs all) the Kings royall issue should faile, &c. whereby those kingdomes might againe bee diuided. All the other arguments and obiections that haue beene made, haue beene all answered before, and need not to bee repeated againe.

1. To the first it was resolued, That the cause of this doubt was the mistaking of the law: for if a Postnatus doe purchase any lands in England, he shall be subiect in respect thereof not onely to the Lawes of this Realme, but also to all seruices and contributions, and to the payment of Subsidies, Taxes, & publique charges as any denizen or Englishman shall be; nay, if he dwell in England, the King may commaund him by a writ of Ne exeat Regnum, that he depart not out of England. But if a Postnatus dwell in Scotland, and haue lands in England, hee shal be chargeable for the same to all intents and purposes, as if an Englishman were owner thereof, & dwelt in Scotland, Ireland, in the Iles of Manne, Iernley, or Gerley, or elsewhere. The same Law is of an Irishman that dwels in Ireland, and hath land in England. But if Postnati, or Irishmen, men of the Iles of Manne, Iernley, Gerley, &c. haue lands within England, and dwel here, they shalbe subiect to all seruices & publique charges within this Realme, as any Englishman shall be. So as to seruices & charges the Postnati and Englishmen borne are all in one predicament.

2. Concerning the triall, a threefold answer was thereunto made and resolued. 1. That the like obiection might be made against Irishmen, Gascoines, Normanes, men of the Iles of Manne, Iernley, and Gerley, of Berwicke, &c. all which appeare by the rule of our bookes to bee naturall borne subiects; and yet no Iury can come out of any of those countries or places, for triall of their births there. 2. If the demandant or plaintife in any action cõcerning lands be borne in Ireland, Iernley, Gerley, &c. out of the Realme of England, if the tenant or defendant plead, that he was born out of the ligeance of the King, &c. the demãdãt or plaintife may reply, that hee was borne vnder the ligeance of the King at such a place within England, and vpon the euidence the place shall not be materiall, but the only issue shalbe, whether the demandant or plaintife were borne vnder the ligeance of the King in any of his kingdomes or dominions soeuer: and in that case the Iury (if they will) may finde the speciall matter, viz. the place where he was borne, and leaue it to the Iudgement of the Court: and that Iurors may take knowledge of things done

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out of the Realme in this and like caſes, vide 7.H.7.8.b.20.Ed.3. Auerrement 34.5.R.2.tit' Trial 54.15.E.4-15.32.H.6.25.Fitzh.Na.Bꝛ 196. Vide Dowdales caſe in the ſixt part of my Reports, fol.47. and there diuers other iudgements be vouched. 3. Browne in Anno 32.H.6. repoꝛteth a iudgement then lately giuen, that where the defendant pleaded, that the plaintife was a Scot, boꝛne at S. Johns Towne in Scotland, out of the ligeance of the King: whereupon they were at iſſue, and that iſſue was tried where the writ was bꝛought, and that appeareth alſo by 27.Aſſ.pl.24. that the Jury did finde the Pꝛioꝛ to be boꝛne in Gaſcoine: foꝛ ſo much is neceſſarily pꝛoued by the woꝛds (troue fuit.) And 20.Ed.3.tit' Auerrement 34. in iuris vtrum, the death of one of the vouchees was alledged at ſuch a caſtle in Bꝛittaine, and this was inquired of by the Jury: and it is holden in 5.R.2.tit' Triall 54. That if a man bee adhering to the enemies of the King in France, his land is foꝛfeitable, and his adherencie ſhalbe tried where the land is, as oftentimes hath beene done, as there it is ſaid by Belknap: And Fitzh. Nat. Bꝛ 196. in a Mortdaunc', if the anceſtoꝛ died in itinere peregrinationis ſuæ verſ. terram ſanctam, the Jury ſhall inquire of it. But in the caſe at the barre, ſeeing the defendant hath pleaded the truth of the caſe, and the plaintife hath not denied it, but demurred vpon the ſame, and thereby confeſſed all matters of fact, the Court now ought to iudge vpon the eſpecial matter, euen as if a Jurie vpon an iſſue ioyned in England, as is afoꝛeſaid, had found the eſpeciall matter, and left it to the Court.

3. To the third it was anſwered and reſolued, That this iudgemẽt was rather a renouation of the iudgemẽts & cenſures of the reuerend Judges and Sages of the law in ſo many ages paſt, than any innouation, as it appeareth by the bookes & booke caſes befoꝛe recited: neither haue Judges power to iudge accoꝛding to that which they thinke to be fit, but that which out of the lawes they know to be right and conſonant to law. Iudex bonus nihil ex arbitrio ſuo faciat, nec propoſito domeſticæ voluntatis ſed iuxta leges & iura pronunciet. And as foꝛ timores, feares grounded vpon no iuſt cauſe, Qui non cadunt in conſtantem virum, vanitimores æſtimandi ſunt.

4. And as to the fourth, it is leſſe than a dꝛeame of a ſhadow, oꝛ a ſhadow of a dꝛeame: foꝛ as it hath beene often ſaid, Naturall legitimation reſpecteth actuall obedience to the Soueraigne at the time of the birth: foꝛ as the Antenati remaine aliens as to the Crowne of England, becauſe they were boꝛne when there

there were ſeuerall Kings of the ſeuerall kingdomes, and the vniting of the kingdomes by diſcent ſubſequent, cannot make him a Subiect to that Crowne to which he was an alien at the time of his birth: ſo albeit the kingdomes, (which Almighty God of his infinite goodneſſe and mercy diuert) ſhould by diſcent be diuided, and gouerned by ſeuerall Kings, yet was it reſolued, That all thoſe that were borne vnder one naturall obedience, whiles the Realmes were vnited vnder one Soueraigne, ſhould remaine naturall borne Subiects, and no aliens, for that naturalization due and veſted by birthright, cannot by any ſeperation of the Crownes afterward be taken away: nor her that was by iudgement of Law a naturall Subiect at the time of his birth, become an alien by ſuch a matter ex poſt facto. And in that caſe, vpon ſuch an accident, our Poſtnatus may be ad fidem vtriuſque Regis, as Bracton ſaith in the afore-remembred place, fol. 427. Sicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita nec debet Francigena & alienigena qui fuerit ad fidem Regis Franciæ audiri placitando in Anglia: ſed tamen ſunt aliqui Francigenæ in Francia, qui ſunt ad fidem vtriuſque, & ſemper fuerunt ante Normanniam deperditam & poſt, & qui placitant hic & ibi, ea ratione qua ſunt ad fidem vtriuſque, ſicut fuit Willielmus comes mareſchallus & manens in Anglia, & M. de Gynes manens in Francia, & alij plures. Concerning the reaſon drawne from the Etymologies, it made againſt them, for that by their owne deriuation, alienæ gentis and alienæ ligeantiæ is all one: But arguments drawne from Etymologies, are too weake and too light for Iudges to build their iudgements vpon: for Sæpenumero vbi proprietas verborum attenditur, ſenſus veritatis amittitur; and yet when they agree with the iudgement of Law, Iudges may vſe them for ornaments. But on the other ſide, ſome inconueniences ſhould follow, if the plea againſt the plaintife ſhould bee allowed: for firſt it maketh Ligeance locall, videlicet, Ligeantia Regis regni ſui Scotiæ, and Ligeantia Regis regni ſui Angliæ: whereupon ſhould follow, Firſt, That faith or ligeance, which is vniuerſall, ſhould bee confined within locall limits and bounds. Secondly, That the Subiect ſhould not bee bound to ſerue the King in peace or in warre out of thoſe limits. Thirdly, it ſhould illegitimate many, and ſome of noble blood, which were borne in Gaſcoigne, Guyan, Normandie, Callice, Tourney, Fraunce, and diuers other of his Maieſties Dominions, whiles the ſame were in actuall obedi-

obedience, and in Berwicke, Ireland, Iernſey, and Gerſey, if this plea ſhould haue bin admitted for good. And thirdly, this ſtrange and new deuiſed plea inclineth too much to countenance that dangerous and deſperate error of the Spencers, touched before, to receiue any allowance within Weſtminſter Hall.

In the proceeding of this caſe, theſe thinges were obſerued, and ſo did the chiefe Iuſtice of the Common pleas publiquely deliuer in the end of his argument in the Exchequer Chamber. First, That no commandement or meſſage by word or writing was ſent or deliuered from any whatſoeuer to any of the Iudges, to cauſe them to incline to any opinion in this caſe: which I remember, for that it is honorable for the State, and conſonant to the Lawes and Statutes of this Realme. Secondly, there was obſerued, what a concurrence of Iudgemẽts, Reſolutions, and Rules there bee in our bookes in all ages concerning this caſe, as if they had beene prepared for the deciding of the queſtion of this point: and that (which neuer fell out in any doubtfull caſe) no one opinion in all our bookes is againſt this iudgement. Thirdly, That the fiue Iudges of the Kings Bench, who adiorned this caſe into the Exchequer Chamber, rather adiorned it for weight then for difficultie, for all they in their arguments vna voce concurred with the iudgement. Fourthly, That neuer any caſe was adiudged in the Exchequer Chamber with greater concordance and leſſe varietie of opinions, the Lo. Chauncellor and twelue of the Iudges concurring in one opinion. Fiftly, That there was not in any remembrance ſo honourable, great, and intelligent an auditorie at the hearing of the arguments of any Exchequer Chamber caſe, as was at this caſe now adiudged. Sixtly it appeareth, That Iuriſprudentia legis communis Angliæ eſt ſcientia ſocialis & copioſa: ſociable, in that it agreeth with the principles and rules of other excellent Sciences, diuine and humane: copious, for that quamuis ad ea quæ frequentius accidunt iura adaptantur; yet in a caſe ſo rare and of ſuch a qualitie, that loſſe is the aſſured end of the practiſe of it (for no alien can purchaſe lands, but hee loſeth them, and ipſo facto the King is intituled thereunto, in reſpect whereof a man would thinke few men would attempt it) there ſhould be ſuch a multitude and Farrago of authorities in all ſucceſſions of ages, in our bookes and booke caſes, for the deciding of a point of ſo rare an accident. Et ſic determinata & terminata eſt iſta queſtio.

Super

Caluins caſe.

Super quo viſis & per cur̃ domini Regis hic plenius intellect' omnibus & ſingulis præmiſſis, diligenterque inſpect' & examinat', maturaq; deliberatione inde habit', pro eo quod videtur cur̃ domini Regis nunc hic quod placitũ prædict̃ per prædict' Richardum Smyth & Nich. Smyth ſuperius placit' minus ſufficiens in lege exiſt ad prædict' Robertum Caluin a reſponſ. ad breue ſuum prædictum habend̃ repellend̃. Ideo conſiderat' eſt per cur̃ domini Regis nunc hic, quod prædict' Richardus Smyth & Nicholaus Smyth ad breue ipſius Roberti vlterius reſpond̃.

Mich.

Super

Mich. 26. & 27. Elizabeth.

Bulwers caſe.

BVlwer de Dalling in Norff. port action ſur ſon caſe enuers George Smith, et count conſt vn Henry Heydon eſquier recouer xx.l.&c. in le cõmon bank enuers le pl. et puis iudgement, & deuant execution, le dit Henrie Heydon mourust, & puis le dit def. ceo ſciant, al nr. in le County de Norff. a vlager le plaint ſur le dit iudgement, in le noſme de Henry Heydon malitioc' & deceptiuè machinatus eſt: in perfourmance de q̃l le defend̃ Trin 23. El. al weſtm̃ in Mich̃ purchaſe vn bꝛe de Capias ad ſatisfaciendũ in le noſme le dit Henrie ſur le dit iudgement, direct al vic̃ de Lounds. queux p le pcurem̃t le dit def. returne, Non eſt inuentus, ſur q̃ le def. purchaſe vn bꝛe de Exigent in le noſme le dit Henrie, quel bꝛe les dits vic̃ p pcurem̃t le dit def. returne, q̃ al ſcũall Huſtings le dit ore pl. auoit eſte demaund, Et ad Huſtingum de coĩbus pꝛis tent' in Guildhalda ciuitat' prædꝛ die lunæ prox poſt feſtum Apoſtol' Simon & Iudæ, an. ſupradict', prædict' le ore pl quint' exact' fuit, &c. & ideo ipſe le pl vtlagatus fuit. Et puis, s. Paſch. 24 Eliz. le def. purchaſe hors del dit common bank vn bꝛe de Capias vtlagatum, in le noſme le dit Henry, direct al Vicont de Norff. a pnder ſon corps &c. le queul bꝛe fuit mention, q̃ le dit ore pl fuit vtlage die lunæ prox' ante feſtũ Apoſtolorũ Simonis & Iudæ, &c. et le dit bꝛe le def. al nr. auantdit in le dit Countie de Norff. deliuer al vn Robert Godfrey adonques deputie del vicont de meſme le countie, al intent que il executer le dit bꝛiefe, le quel Robert, per force del dit bꝛiefe pꝛiſt & arreſt le dit ore pl, et luy impꝛiſon p le ſpace de 2. moyes, ieſque le ore pl purchaſe ſon charter de pardon, per reaſon de quel vtlagarie il forfeit touts ſes biens et chateux. Et ſur ceſt count le defendant demurre en ley: Et le pꝛincipall cauſe del demurrer fuit, pur ceo que ceſt action per le pretence del defendant

couient daner eſtr̃ pozt in Midd̃ ou le tozt commence, car la (cõe fuit dit) le def. purchaſe cidñ le Cap̃ ad ſatisfac', come le Exiſtẽt & l' Cap̃ vtlag. auxy. Et coñt q̃ le Cap̃. vtlag. fuit execute in Norff. vñ lacc̃ couient eẽ pozt ou l' tozt cõmẽce: cõe in l' cas de cõſpirac̃ ẽ 42 E. 3. 14. & diuſauts cales fuer̃ miſe. Auxy p̃ le vtlagac̃, que fuit in Londzes, touts ſes biens & chateux fuer̃ fozfeits, ou eſt pluis reaſon a pozter lacc̃ q̃ in Nozf. Mes fuit rñd̃ & reſolue, q̃ laction fuit bin pozt in Nozf. car eſt vn maxime in ley, qd̃ ibi ſemper debet fieri triatio, vbi iuratoꝝ melioꝝ poſſunt habi' notitiã, & in Nozff. fuit le viſible tozt, car la le pl̃ fuit impziſon p̃ l' ſpace d̃ 2. mois: & pur ceo ſer̃ graũd reaſõ q̃ le pl̃ poit aũ ſon acc̃ la, & nõ cõſtat p̃ le recozd q̃ux biens ou chateux le pl̃ ad al temps del vtlagac̃, mes pur agrauating des dãmages le pl̃ poit doner in euidence queux biens et chateux il ad fozfeit per le vtlagarie. Et ceſt action conſiſt ſur 2. pzincipall parts, lun matter de recozd, et lauter matter in fait, & nul des matters del recozd, mes eſt mixt oue matters in fait, & nul matter en fait, mes eſt mixt oue matters de recozd. Car les dẽs & le vtlagac̃ ſont matters de recozd, mes mixt oue matters en fait, ſ̃. le purchaſing et pzoſecution de eux per le def. in noſme de Henry Heydon, queux ſont matters en fait: auxy lempziſonment eſt matter en fait, mes ceo eſt mixt oue le bzieue de Capias vtlagatum q̃ eſt de recozd, ſ̃. ſi le pl̃ fuit arreſt per vertue de ceo: et matters en fait ſont ſolement triable per pais et nemy matters de recozd. Et quant lun matter in lun Countie eſt dependant ſur le matter in lauter Countie, la le pl̃ poit eſlier en quel Countie il voile porter ſon action (ſinon que le defendant ſur le generall iſſue plede, ſerra pzeiudice de ſon triall, come il ne ſerra en ceſt cale) Come ſi 2. conſpire de enditer vn en vn Countie, & ils per lour malicious pſecution font execution del conſpiracie en auter Countie, et la cauſe le partie deſte endite, le plaintife poit auer ſon action de conſpiracie in q̃l countie que il voit, car ils mittont lour conſpiracie in lun countie, in execution in lauter countie, et la matter de recozd del enditement eſt mixe oue matter en fait: Mes ſils conſpiront en vn countie, per fozce de quel conſperacie ſans aſcun auter act p̃ eux, il eſt endite en auter coũty, la le bzieue couient eſte pozt in le countie ou le conſpiracie fuit, car les def. ount fait riens in le countie ou le indictement fuit ne fuer̃ parties ou pziuies al trouer del inditemẽt, fozſq̃ ſolement per le conſpiracie in lauter countie. Et ceo appiert in 14. Ed. 4. 3. b. & iſſint les liuers in 42. E3. 14. 20. H. 6. 10. Fit. N. B. 116. b et auters lieurs bien reconcile, Si manaſſe ſoit fait ẽ Eſſex, per que mes tenants recead in Londzes, ieo alia mon action in Eſſex, & nemy

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in londres, car in tiel case ico ay faits riens in londres, 9 H. 6. 42. En touts cases quant laction est foundue sur 2 choses, & ambideux sont materiall ou trauerlable, et lun sans lauter ne maintaine laction, la le pl' poit eslier a porter son act' in q̄l des Counties il voit: come si seruant soit retaine en vn countie & depart in auter: et oue ceo accord 41 E. 3. f. 16. 34 H. 6. 18. 38 H. 6. 15. 14 E. 4. 6. 20 H. 11. 29 H. 8. Dier 38. Vide 20 E. 3. 25. &c. Jiisint si hõe soit arrest in execution in vn countie & il escape in auter countie, le pl' poit eslier a porter laction in quel des counties il voit: Et oue ceo accord 14 E. 4. 3. 30 H. 6. 6. 11 E. 278. Jiisint in bre Dauntie foundue sur prescription vers home de religion, ou corps corporate, ou lesglise ou mesalon est in vn countie, et le seisin est alledge in auter countie, le pl' poit eslier in quel countie il voit porter son action, 48 E. 3. 26. 4 H. 4. 1. 4 H. 6. 5. b. 10 H. 6. 19. 39 H. 6. 15. 2 E. 4. 28. 4 E. 4. 26. &c. Fitz. Nat. Br. 152. Jiisint, si annuitie soit grant in vn countie, de estre pay in auter, action gist ou le grant fuit: et oue ceo accord 8 H. 6. 23. Jiisint si home cite vn in vn countie, dappearer deuant laduncal in auter countie, pur chose fait in le corps del countie, per force de que le partie appiert il poit auer son action in lun countie ou lauter a son pleasure, 5. Mar. Dier 159. b. Vide 42 E. 3. 14. 44 E. 3. 31. 32. 46 E. 3. 8. 3 H. 4. 3. 2. 38 H. 6. 14. 14 E. 4. 3. Mesm̄ la ley de court Espiens. Jiisint si def. iect protection in lun countie, et remaine in auter countie, il poet porter laction in quel des counties il luy pleist: Vide 20 H. 6. 10. Jiisint si hõe ad ferust vn in vn countie, et il morust in auter countie, appeale de murder poit auer estre port in lun countie ou lauter: et uncore le def. fist riens in le countie ou le partie morust, mes le mort que insuist sur le ferue fait le felonie, 18 Ed. 3. 32. 9 H. 6. 63. 45 Ass. pla. 9. 43 Ed. 3. 3 H. 7. 12. 4 H. 7. 18. 6 H. 7. 10. 11 H. 4. 93. Si home commit Robberie in vn countie, et carrie les biens in diuers counties, le partie robbe poit auer appeale de felonie in quel des counties il voit, mes nemy de appeale de Robberie mes felonie in le countie ou le robberie fuit fait, car est felonie in touts les counties ou les biens sont emports (car felonie ne deuest pas propertie) mes nest robberie (que couient estre fait al person dun hõe) mes felonie en le countie ou le robberie fuit fait. Vide 4 H. 7. 8. b. 29 H. 8. 39. 40 Dier 11 H. 4. 93. Vide 3 Ed. 3. tit. Ass. 446. Jn Dec, si home count dun lease pur ans in vn countie, de trein aut countie, il couient porter son action ou le lease fuit fait, et nemy ou le bre gist, car laction est foundue sur le contract fait per le lease: 38 H. 6. 15. accord per Cur. 8 H. 6. 29. acc. Vide 4 H. 6. 18. 14 E. 4. 3. 29 H. 8. 40. Dier. Et issint de ley bien explaine in case in q̄ sont varieties

reties des opinions in nostr̃ liuers. Mes si lease soit fait in vn countie, et le terre gist in auter, laction de waste serra porte ou le terre gist, et nemy ou le lease fuit fait, coment q̃ leterme soit passe, car le tre et damages, ou damages solement pur le waste, que est local, serra vncouer, 14. E. 4. 3. accord. Si home assume de curer vn in vn countie, et miskait in auter countie, le pl̃ ad election a porter son action in q̃l de 2 counties il voit: Et oue ceo accord 11. R. 2. tit' action sur le case 37. Si home ne repaire wal in Esser, que il doit repaire, per que mon terre in Mydd̃ est surrounde, ieo poy porte mon action in Esser, car la est le default del def. come est adiudge in 7. H. 4. 8. ou ieo poy auer ceo in Mydd̃, car la ieo aye le damage, come est pue per 11. R. 2. tit. action sur le case 36. Iisint si vn forge vn Chke in vn countie, & proclaime ceo in auter, le pl̃ poit esslier in quel countie il voit porter son action, 29. H. 8. 38. Vide 22. H. 6. 3. Mes quaunt le defendant sur son pleder de rien culpabl̃ serra p̃iudice in son trial, la le plaintife nad election a porter son bke in quel countie que il voit. Vide 29. H. 8. Dier fo. 38 ou Gawyn sua appeale de robberie in le countie de Wiltes. ou le robberie fuit fait, emers Hulley & Gibs come accessories, & count que les principels, nosmes in le bke, & q̃ fuer attaint, font le robberie in com' Wiltes. & q̃ les def. felonioussint al Londres, deuant le robberie fait, abbes eux a faire ceo: et fuit adiudge, q̃ coms q̃ l'pl̃ ne poit añ forsq; vn appel vs le principal et accessories et vers le principal ceo de necessitie couer esse porte in com' Wiltes. vnc̃, pur ceo q̃ ceux d' Com' Wiltes. sur rien culp̃ plede, & Londres ne poer iopner, et ceux de Wilt. ne poer inquirer d̃ chose in Lõdres, coms q̃ soit chose trãsitorie (car in case de felonie, q̃ cõcerne le vie de hõe, chescũ act ꝑa trie in le vpper countie ou le act fuit fait in veritie) lappeal vers les dits accessories abate: vide 43. E. 3. 17. 18. 19. et est deste obscure, q̃ in touts actions reals, ou ascun issue surd̃ sur le terr̃ ou in ascun action, in q̃ possession del terre, ou chose locall, ou que surd̃ sur le terr̃ per reason de ceo, est deste vncouer, touts ceux serra porte in le countie ou le terre gist: come in briefe de droit de gard del terre, ou briefe de Intrusion d̃ gard, ceux serra porte in le countie ou le terre gist, coms que l'refusel fuit, ou le seignior soit in auter countie, 29. E. 3. 38. H. 6. 14. & 22. R. 2. tit. Bre. 937. accord Iisint in bke de Dett de gard pur le corps tantũ. ceo serra porte in le countie ou le terre est, car ceo est in le droit, et auoy del terre, 21. E. 3. 42. & 30. E. 3. 25. 9. E. 3. 12. 13. 10. E. 3. 7. accord, et le reason de 40. E. 3. 6. accord oue ceo, coment q̃ le iudgement est mentiõ la deste done al contr̃. Mes bke de Rauishment de gard ꝑa porte ou le rauishment fuit, et nemy ou le tre est, ou lou le corps est carrie, car

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ceo eſt foundue ſur le rauiſhment, 38.H.6.14, 22.R.2.tit' Brief 937. & 12.Eliz.289.Dier. Et briefe de forfeit de mariage ſerr̃ pour le terre eſt; car le briefe ſuppoſe vn intruſion in la terre: & que ceo accord̃ le dit liure in 22.R.2.& 38.H.6.15. Et briefe de valore maritagij ſerr̃ pour la terre eſt, car le ſeignior ne beſoigne de faire aſcun tender; mes ſil fait tender & lauter refuſe, & il ceo alledge in le counte, donques briefe de valore maritagij gist in le counte ou le refuſal fuit, 22.R.2. tit' Briefe 937. 38.H.6.15. Briefes de Quare impedit & quare incumbrauit ſerr̃ tout & foits pour ieſgliſe eſt: car p lun le pl̃ recouer̃ ſon preſentm̃t, & p lauter le clerke ieuesque ſerr̃ remoue & le clerke le pl̃ admitt, 38.H.6.14.& 15. accord̃: vid 4. Ed.3.9. autermit eſt in le caſe del Roy. Mes Quare non admiſit ſerr̃ pour in le coũty ou le refuſel fuit, & nyy in le coũtie ou le ieſgliſe fuit; car damages ſolemt̃ ſont deſtre recouer, & le refuſall eſt le commencem̃t del tort & le ground del action: & iſſint eſt le liure adiudge in 38.H.6.14.&15.F.N.B.47.b. Et Quare impedit dun p̃bend ſerr̃ pour in le counte ou le Cathedrall Egliſe eſt, & nemy in le counte ou le corps de p̃bend eſt, car le clerke de pl̃ eſt deſtre induct & inſtal in le Cathedrall Egliſe: et oue ceo accord̃ 21.Ed.3. 5.& Dier 2.Eliz.194. mes 43.E.3.24.& 15.E.3. Bre 325. ſemble al cõtr: vide 24.E. 3.37. Et iſſint le ley bien explaine, in vn caſe in que fuit diuerſity des opinions in nr̃e liures. Et ſi home al cõmon ley ad rent iſſuant hors de deux counties, il ne poit auer eux Aſſiſe in vn counte, pur ceo q̃ cheſcun part del terre in les deux counties eſt charge oue le rent, & tout ſerr̃ miſe in vieu, come eſt agree 18.Ed.2.tit' Aſſiſ.380. 18. Ed.3.32.19.Ed.3.21.10.Aſſiſ.pl.4.& 18. Aſſiſ. pl. 1. mes ſi home fait leaſe pur auter vie del terre in deux counties, reñ rent, & le rent eſt arere, & ceſtuy q̃ vie deute, le leſſor auera action de det in quel des counties il voet, car ore ceo eſt chaunge in det: & in ceſt caſe nul terre ſerr̃ miſe in vieu, mes le p̃ſon del debtor ſerr̃ ſolement charge per le common ley. Iſſint ſi rent ſoit iſſuant hors del terre de B. in deux coũties, & le rent ẽ arere, & ceſtuy q̃ ad le rent morust, ſes executors poient aũ actiõ de det vers B. in q̃l des counties ils voulont. ſur leſtat de 32.H.8.cap. 37. car coment & il couient porter laction in lun des counties, vncore al common ley le perſon le defendant eſt charge in laction de det, & nemy le terre. Et deuant le ſtatute de 6.R.2.cap.2. briefe de dett̃ accroſt vers rete tuor, & autiels actions, poient eſtre port in tiel counte ou le partie poit eſtre mieulx ameine eins a reſponder, & le plaintf poet auer count dun contract ou receite, &c. in aſcun auter counte, quia debitum & contractus, &c. ſunt nullius loci: vide pur ceo 2.Edw.3.44. 6.Edw.3.266. & 275. 8.Edw.3.389.

reties des opinions in nostr liuers. Mes si lease soit fait in vn countie, et le terre gist in auter, laction de Wast serra port ou le terre gist, et nemy ou le lease fuit fait, coment q̄ leterme soit passe, car le tre et damages, ou damages solement pur le waste, que est local, serra recouer, 14. E. 4. 3. accord. Si home assume de curer vn in vn countie, et miskait in auter countie, le pl̄ad election a porter son action in q̄l de 2 counties il voit: Et oue ceo accord 11. R. 2. tit' action sur le case 37. Si home ne repaire wal in Esser, que il doit repaire, per que mon terre in Wild̄ est surrounde, ieo poy porte mon action in Esser, car la est le default del def. come est adiudge in 7. H. 4. 8. ou ieo poy auer ceo in Wild̄, car la ieo aye le damage, come est prue per 11. R. 2. tit. action sur le case 36. Iesint si vn forge vn Chke in vn countie, & proclaime ceo in auter, le pl̄ poit eslier in quel countie il voit porter son action, 29. H. 8. 36. Vide 22. H. 6. 3. Mes quaunt le defendant sur son pleder de rien culpabl̄ serra p̄dict in son trial, la le plaintife nad election a porter son bke in quel countie que il voit. Vide 29. H. 8. Dier fo. 38 ou Gawyn sua appeale de robberie in le countie de Wiltes. ou le robberie fuit fait, enuers Hussey & Gibs come accessories, & count que les principels, nosmes in le bke, & q̄ fuer attaint, font le robberie in com' Wiltes. & q̄ les def. feloniously al Londres, deuant le robberie fait, abbert eux a faire ceo: et fuit adiudge, q̄ cont q̄ l' pl̄ ne poit ascun forces vn appel vers le principal et accessories et vers le principal ceo de necessitie couiet este port in com' Wiltes. vn̄, pur ceo q̄ ceux d' Com' Wiltes. sur rien culp̄ plede, & Londres ne poiet ioyner, et ceux de Wilt. ne poiet inquirer d' chose in Lōdres, cont q̄ soit chose trāsitorie (car in case de felonie, q̄ cōcerne le vie de hōe, chescū act prra trie in le upper countie ou le act fuit fait in veritie) lappeal vers les dits accessories abate: vide 43. E. 3. 17. 18. 19. et est deslre obstue, q̄ in touts actions reals, si ascun issue surd̄ sur le terr ou in ascun action, in q̄ possession del terre, ou chose locall, ou que surd̄ sur le terr per reason de ceo, est deste recouer, touts ceux serra port in le countie ou le terre gist: come in briefe de droit de gard del terre, ou briefe de Intrusion d' gard, ceux serra port in le countie ou le terre gist, cont que l' refusel fuit, ou le seignior soit in auter countie, 29. E. 3. 38. H. 6. 14. & 22. R. 2. tit. Bre. 937. accord Iesint in bke de Dett de gard pur le corps tantū. ceo serra port in le countie ou le terre est, car ceo est in le droit, et sauor del terre, 21. E. 3. 42. & 30. E. 3. 25. 9. E. 3. 12. 13. 10. E. 3. 7. accord, et le reason de 40. E. 3. 6. accord oue ceo, coment q̄ le iudgement est mentiō la deste done al cont. Mes bke de Rauishment de gard prra port ou le rauishment fuit, et nemy ou le tre est, ou lou le corps est carrie, car

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ceo eſt foundue ſur le rauiſhment, 38.H.6.14.22.R.2.tit' Brief 937. & 18.Eliz.289.Dier. Et briefe de forfeit de mariage ſerr̃ pozt ou le terre eſt; car le briefe ſuppoſe vn intruſion in la terre: & oue ceo accozd̃ le dit liure in 22.R.2.& 38.H.6.15. Et briefe de valore maritagij ſerr̃ pozt ou la terre eſt, car le ſeignioz ne beſoigne de faire aſcun tender; mes ſi fait tender & lauter refuſe, & il ceo alledge in le counte, donques briefe de valore maritagij giſt in le counte ou le refuſal fuit, 22.R.2. tit' Briefe 937. 38.H.6.15. Briefes de Quare impedit & quare incumbrauit ſerr̃ tout ſoit ſ pozts ou leſgliſe eſt: car p lun le pl̃ recouer̃ ſon preſentm̃t, & p lauter le clerke leueſque ſerr̃ remoue & le clerke le pl̃ admitt̃, 38.H.6.14.& 15. accozd̃: vid̃ 4. Ed.3.9. autermit eſt in le caſe del Roy. Mes Quare non admiſit ſerr̃ pozt in le coũty ou le refuſel fuit, & nyy in le coũtie ou le egliſe fuit; car damages ſolemit ſont deſire recouer, & le refuſall eſt le commencem̃t del tozt & le ground del action: & iſſint eſt le liure adiudge in 38.H.6.14.&15.F.N.B.47.b. Et Quare impedit dun p̃bẽd ſerr̃ pozt in le counte ou le Cathedrall Egliſe eſt, & nemy in le counte ou le cozps de p̃bend eſt, car le clerke de pl̃ eſt deſire induct & inſtal in le Cathedrall Egliſe: et oue ceo accozd̃ 21.Ed.3. 5.& Dier 2.Eliz.194. mes 43.E.3.24.& 15.E.3. Bſe 325. ſemble al cõtr: vide 24.E.3.37. Et iſſint le ley bien explaine, in vn caſe in que fuit diuerſity des opinions in nr̃e liures. Et ſi home al cõmon ley ad rent iſſuant hoz̃ de deux counties, il ne poit auer eyre Aſſiſe in vn counte, pur ceo q̃ cheſcun part del terre in les deux counties eſt charge oue le rent, & tout ſerr̃ miſe in vieu, come eſt agree 18.Ed.2.tit' Aſſiſ.380.18.Ed.3.32.19.Ed.3.21.10.Aſſiſ.pl.4.& 18. Aſſiſ. pl. 1. mes ſi home fait leaſe pur auter vie del terre in deux counties, cenõ rent, & le rent eſt arere, & ceſtuy q̃ vie deuie, le ſeſſoz auera action de det in quel des counties il voet, car oze ceo eſt chaunge in det: & in ceſt caſe nul terre ſerr̃ miſe in vieu, mes le ylon del debtoz ſerr̃ ſolement charge per le common ley. Iſſint ſi rent ſoit iſſuant hoz̃ del terre de B. in deux coũties, & le rent ẽ arere, & ceſtuy q̃ ad le rent mozuſt, ſes executoz̃ poient aũ actiõ de det vers B. in q̃l des counties ils voilont. ſur leſtat de 32.H.8.cap. 37. car coment & il couient poꝛter laction in lun des counties, vncoze al common ley le perſon le defendant eſt charge in laction de det, & nemy le terre. Et deuant le ſtatute de 6.R.2.cap.2. briefe de dett̃ accoũt vers recetuoz, & autiels actions, poient eſtre pozt in tiel counte ou le partie poit eſtre mieux ameine eins a reſponder, & le plaintf̃ poet auer count dun contract ou receite, &c. in aſcun aut̃ counte, quia debitum & contractus, &c. ſunt nullius loci: vide pur ceo 2.Edw.3.44. 6.Edw.3.266. & 275. 8.Edw.3.389.

10.E.3.7.19.E.3.Iuriſd 29.29.E.3.26.33.E.3.tit'Iuriſd 57.40.E.3.
7. 3.H.6.30.15.E.4.19.21.E.4.88. Come in 22.H.6.9.& 10. ou le
Roy grāt office de ſurueyor del packing de touts maner ō draps
deins London & les liberties de ceo, q̄ ſont in 2. coūties, & laſſ. fu-
it port in Mido: & la Newton & Paſton diſoient, q̄ eſt graund de-
uerſitie penter aſſiſe de rent & ceſt aſſiſe; car ou rent charge eſt iſ-
ſuant hors de terres in diuers counties, cheſcun pcell eſt charge
oue tout, & couient q̄ touts les teñ del terre ſont noſme, mes icy
le plon eſt charge, et nemy le terre, vncore loffice pur q̄ laſſiſe fuit
port extend in deux counties. Et ſi fine ou feoffement ſoit fait de
terres in deux counties oue garr', le Warrant' Chartæ poet eſtr port
in alcun des counties, 29.E.3.3. Eſt puruieu p̄ leſtatute de 7.R.2.
cap.10. q̄ Aſſiſe de nouel diſſeiſin ſerr deſormes grant & fait de rent
arere, due des tenemts in pluſors counties, deſtre tenus in les
confines des counties, & ſur ceo laſſiſe ſerr pr̄iſe & trie p̄ gents de
meſme les counties, in meſm̄ le manner & forme come eſt fait dun
cōmon de paſture in vn countie, appenō aux teñts in aur̄ county:
car, al cōmon ley, ſi home ad eſoe cōmon in terr̄ in vn countie, ap-
pendant ou apptenāt al terre in auter countie, ſi auera deux ſeue-
ral briefes al vic̄ des ſeueral counties: ou ſi le terre a q̄, &c. giſt in
vn countie, & les terres in que, &c. giſont in ſeueral coūties, la ſi a-
uera vn briefe de Aſſiſe al vic̄ del countie ou le terre a q̄, &c. giſt, & ſe-
uerall briefes al vic̄ des counties ou les terres in q̄, &c. giſont: et
tout ceo appiert in le Regiſter & F.N.B.180.a. Et meſme la ley eſt,
quant nuſance eſt fait in vn countie, & le terre a que, &c. eſt in auter
countie, come appiert auxy in le Regiſter & F.N.B.183.k. Iſſint q̄ ſi
home ad rent in 3. ou 4. counties, ſemble q̄ ceſtuy q̄ eſt diſſeiſie po-
eet auer ſeueral Aſſiſes deſtre pr̄iſe in confinio comitatuū: car le let-
ter del ſtatute de 7.R.2. eſt generall, de rent due des tenemts in
pluſors counties: et coñt q̄ ceo ad vn reference al caſe de cōmon
de paſture, &c. vncore intant q̄ in caſe de common de paſture ſi le
terre in q̄, &c. giſt in diuers counties, & la terre a q̄, &c. giſt in auter
countie, la ſerr tants des briefes come ſont ſeueral counties; de
ceo inſuiſt q̄ tiel remedie auera ceſtuy q̄ ad rent iſſuant des tres in
pluſors counties. Auxy le caſe del common eſt miſe exempli gratia
& ſimilitudinariè, & nullum ſimile quatuor pedibus currit: et neſt
neceſſarie, q̄ vn ſimile accord̄ in touts points. Et le ſtatute de 7.
R.2. fuit fait pur ſatiſfier vn doubt que fuit conceiue deuant, car
p̄ ceo eſt puruieu, que briefes in tiel caſe ſerr faits in le Chaunce-
rie, ſauns aſcun manner de contradiction, cy bien des diſſeiſins
deuant faits, come in apres deſtre fait: & le doubt fuit ſur leſta-
tute de Magna Charta, cap.12. Recognitiones de noua diſſeiſina,

& de

& de morte anteceſſor̄ non capiant'niſi in ſuis comitatibus: Et alcun̄ teigne, que ceo ne fuit obſerue q̄ſit lez Juſtices de aſſ. ſeont in confinio comitatuum, & noſmement quant ſont xx. counties meſne int̄ les deux counties. come le liure eſt in 5.E.4.fol.2. Mes ceſt doubt poit eſtr̄ auxy conceiue ſur le dit Aſſ. de nouel diſſ. de common, q̄ſit la t̄re in q̄, &c. eſt in vn Countie, & la t̄re a que, &c. in auter countie (quel caſe ſans queſtion neſt paſſe reſtraine per le dit Stat̄: Car Aſſiſe de no. diſſ. g̈iſt de common de paſture al common ley (come p leſtat̄ de W.2.ca.29. appiert) Vid̄ 10.E.3.21.&10.Aſſ.p.4. Et ſi beſoigne fuit, leſtatute de W.2.ca.28. extend al dit caſe del Rent, p q̄ eſt pruueu, Quod quotieſcunq; de cætero euenerit in Cancellaria, q̄d in vno caſu re pit'br̄, & in conſimili caſu, cadente ſub eodem iure, & ſimili indigente remedio, non re pit', cōcordent clerici in Cancellaria in breui faciendo, &c. vel ad proximum parliamentum de conſenſu Iuriſperitorum fiat b̄re: et leſtatute conclude oue leffect dun maxime del Common ley, Quod curia dñi Regis non debet deficere cōquerentibus in iuſtitia pquirenda. Vide 38.E.3.13. ou le caſe fuit, q̄ le roy poſt b̄re de droit de la quart pt des diſmes & offerings de Eſgliſe de S. Dunſtone in le Weſt in Fleetſtreet, in le Suburbs de Lōdres, enuers le Priour de S. Johns de Jeruſalem in Engliterre: la Candiſh pſit exception al b̄re, pur ē q̄ conſt q̄ ceſt b̄re ē done per leſtatute ō W.2.cap.5.verſ. finem, & Artic. Cleri ca.2. q̄r ſtat dōe, que il alia b̄re Ad petendum aduocationem decimarum petitar̄, &c. & ceſt b̄re eſt conceiue de la quart pt des diſmes & offerings, le q̄l nē myp garſt per leſtatutes, iudgemt de b̄re, intant que leſtatutes ne done b̄re de la quart pt des diſmes. Thorpe le chiefe Juſtice, que dōe le rule, dit, conſt q̄ leſtat ne limit p exp̄ſſe pols, forſq; des diſmez, vncore ceux in le Chauncery poient faire b̄re in conſimili caſu, q̄l b̄re eſt aſſets bone, p q̄ r̄ndez. Et in 18.E.2.tit' B̄re 827. b̄re dēt̄ fuit poſt in le Countie de Sull. le ten̄t plead releaſe del aunc̄ le pl̄ oue garſt, q̄ fuit dedit, & troue pur le pl̄ in Londres per Jurie de Friday ſtreet, &c. p que le dōt recou̇, & le ten̄t poſt attaint, & la exception fuit pſiſe, pur ē q̄ in le b̄re neſt compriſe dattacher le partie, iudgement, &c. & pur le pl̄ fuit dit, q̄ b̄re fuit grant al vic̄ de Lōdres de ſommoner les xviij. et dattacher les xij. et auſ b̄re al vic̄ de Sull. dattacher le ptie ou le t̄re fuit, & lun b̄re et lauſ fuer lyes in Court: a q̄ fuit dit, q̄ fuit nul ley ſpecial, q̄ mainteinera ceſt b̄re q̄ eſt hors de common courſe. Beresford chiefe Juſtice del banke, q̄ done le rule, dit, In nouel caſe nouel remedie, &c. p q̄ r̄ndes. Et pur ceo ſi ſoit S̄r̄ & ten̄t, & le tenancie extend in ij. counties, in ceſt caſe ſi les rents & ſeruices ſont arere, le S̄r̄ poit aū ſeuerall b̄res des cuſtomes & ſeruices, pur cheſcun Countie vn b̄re, & auer̄ eux

eux returnable a vn tour in le Common banke, & donqs de count sur eux coñ son case est, quia aliter curia Regis deficeret cõquerentibus in iustitia perquirenda: & sic ceo accord F.N.B.151.b.& 30.E.1. tit' Droit pl.vltimo. Et ceo est bõe exampl pro quolibet consimili casu, &c. simili indigente remedio. Vide 12.E.1.tit' Attaint 71, fort bone case: & l' reason & rule del liure in 21.E.3.fo.18. est destr̃ observe, ou le case fuit, que fine fuit leuie dun Manor in vn countie, & le tenãcie gist in auter countie, ore, ou l' p q̃ seruitia serra port, fuit le question: & fuit adiudge, q̃ ceo fuit bñ port in le count ou le Mannor fuit: Car la Stone pronounce le rule del court in ceux parolx, il ne poit nul auk breañ, car il couient, q̃ son bre soit accord & le fine, et port in le countie ou le note est leuie. Vide 11.R.2.tit' Action sur le case 36.7.H.4.8. Vide 26.H.6.tit' Couenant 9.41. Ass.pl.12.9.H.5. 6.22.H.6.5. Et in le principal case, ou fuit obiect q̃ le dit Cap Vtlagat' fuit errontous, car ceo fuit proxim̃ ante festum, &c. ou fert post festum, &c. le Court ne prist ascun regard a ceo, car le error in le br̃ q̃ le def. fn ad torcionariñt pursue ne donek aduãtage a luy mesme: mes intant q̃ il fuit imprison & molest p̃ ceo bõe cause dact al pl. Iuxp le Court ne respect l' clause, q̃ le def. al nd. in coñ Norff. &c. malitiosè & deceptiuè machinatus fuit, &c. Car ceo est ey secret et ey incertaine q̃ ceo ne poit estre trie.

Hill.

Hillar. 27. Eliz. Reg. in Scaccar.

Sir Miles Corbets caſe.

INter Sir Ed. Clere & Myles Corbet adonqs armigr oyez chiual fuit reſolue in vn caſe concernãt le perſonage de Marham in le counti de Norff. que ou in le pays de Norff. la eſt vn ſpecial manner de common appel Shack, que eſt deſte pziſe interre arable, apꝛs harueſt tielqz l'tre ſoit ſeme arere, &c. et ceo commence in ancient tẽps en ceſt maner. Les camps de arable tre in ceſt pais conſiſt de terres de mults et diuers ſeueral plons giſants intermixt in mults & ſeũal petit peels, iſſint q̃ neſt poſſibl' q̃ alcũ de eux cãꝰ trũꝰ al auks, poit paſcer lour auers in lour tre demeſne, & pur ceo chelcun de eux mitte eins lour auers a paſcer promiſcuè in l'ouert cãpe: et ceux poix, daler Shack, ſont tant adire cõe daler a libertie, ou daler alarge: in q̃ le policie dauncient tẽps eſt deſte obſeruue q̃ le ſeuerance des camps in cy petit parcels a tants des ſeueral plons, fuit dauoider incloſure et a mainteiner agriculture. Mes eſt deſte obſerue, que le dit common appel Shacke, que al commencement fuit foꝛſqz in nature dun feeding p cauſe de vicinage pur auoiding de ſuit, in alcun lieus deins ceſt pais eſt p cuſtome alter in nature dũ cõmon append ou appurtenãt, et in alcũ lieus ceo retaine ſon oꝛiginal natur', et le rule de ſcaũ ceo eſt l'cuſtom et vſage de chelcun ſeũal vill', ou lieu, car cõſuetudo loci eſt obſeruã p & pur ceo, ſi in le ville de Dale (exempla gratia) vn q̃ ad acquis diũꝰ peelz enſembl', in q̃ux les inhab. ont vſe dauer Shacke, & lõg tẽpꝛ paz ad incloſe ẽ, & nient obſtant toutz foitz apꝛ harueſt les inhab. ôt ew ſhack la, p paſſãꝰ in ẽ p barres, ougates oue lour aũs, la ẽ ſtra pziſ cõe cõmõ appẽd ou appꝛtenãt, & lowñ ne poit excluꝺ eux ꝺ cõmõ la nient obſtãt q̃ il ne voit cõmõ oue eux, mez a teñ ſez pp frez iſſint incloſe in ſeũalty, & eſt vñ pue p le vſag, car nient obſtãt launciẽt incloſur', lez inhab. ont ew cõmõ la: mes ſi in le ville de S. le cuſtome & vſage ont eẽ, q̃ chelcũ owñ in ñ le vill' ad incloſe

lour

lour ꝑper terre de temps in temps, & illint ad teigne ceo in seue-raltie, la cest vlage ꝑuo, q̄ ceo ne fuit forsq̄ in natur̄ del Shacke originalm̄t pur cause de vicinage, & illint ceo continue; et pur ceo la il poit inclos & teigne ceo in seūaltie, et secluder luy meisme dauer Shacke oue les auters: et remit q̄ in le dit case del ville de D. le vlage ad este, q̄ nient obstant le enclosure per diuers Inhabitants de tardife tẽps, les auters Inhabitants out ewe shacke la, vncore il vn home ad auncient close dauncient temps ꝓche hors del campe, et il & touts ceux q̄ estat̄ il ad, ad teigne ceo touts foits in seūaltie, il bien poit tenet ceo inclose; car quant a tiel ꝓcel illint auncientm̄t inclose, le shacke la reteigneť son auncient et original nature, & celly q̄ claime Shacke la, ne poit ꝓscribe dauer common in ceo. Nota bone resolution, que estoit oue reason, et nul inconuenience, innouation, ou cause de suits ou troubles sur ceo poit surder, mes quiet & repose serra per ceo in tiels cases estadlie, quel ceo pense digne destre report, pur ceo que est vn general case in le dit pais: et al ꝓmes le court fuit tout ouster-ment mis con vsant del natur̄ de cẽ common appell Shacke. Fuit auxy resolue a m̄ le temps, q̄ si les cõmons del ville de A. et del ville de B. sont adiacent, & q̄ lun doit aū common oue lauť y cause de vicinage, & deins le ville de A. sont 50. acres de common, & in l' ville de B. sont 100. acres de common, in cest case les inhabitantz del vill' de A. ne poient mitť plusors aūs in lour common de 50. acres q̄ cẽ voit depastuť sans aūm respect al commõ deins le vill' de B. nec è conuerso: car le original cause de cest common y cause de vicinage, ne fuit pur ꝓfit mes pur ꝓuenting õ suitz ẽ pais champian, pur recipꝓcal escapes de lun vill' in lauť: et pur ceo si le common del ville de A. voit depastuť 50. avis, et del vill' de B. 100. avis, nest ꝓiudice a lun ou lauť, si les avis de lun ville escape & depasture in le common del auť ville recipꝓcalm̄t, car si touts les auters depasture promiscuè insemble per my & per tout, ne sert aūm ꝓiudice a lun ou lauter.

Cases.

Caſes ſur leſtatute de 13. Ed. 1.

de Wincheſter.

LE puruiew del dit act eſt, Que deſormes cheſcun pais ſerra iſſint garď, que mainte nāt aꝑs Robberies & felonies faits, ſoit fait freſh ſuit ď vill' in ville, & de pais in pais, &c. ⁊ aꝑz l' felonie ⁊ robberie fait, le paiꝭ naūa pluis longe ẗme que 40 iourꝭ, deinꝭ q̄ux 40. iourꝭ coueńdr̄ q̄ ilꝭ facēt gree de la robberie, ou del miſkait, ou que ilꝭ rūdzont del cozpꝭ des miſkelozꝭ: ſ̄ q̄ux pols diūꝭ reſolutiōꝭ ont eſte fait.

Trin 27. Eliz.

TRin' 27. Eliz. fuit tenus ꝑ totā curiā in cōi banco, en vn caſe que happa in Harleſton in le counte de Suff. Que ſi home ſoit robbe in ſon meaſon, ſoit ceo en le iour, ou en le nuit, le hundzed in q̄ le meaſon eſt ne ſerť charge oue ceo: car coſnt q̄ le lr̄e del dit act ſoit geńal ſans ꝓler daſcū lieu in ſpeciall, vnť tiel robberie nē pas deins le dit act pur 3. reaſonꝭ. 1. ꝓur ceo q̄ le meaſon de cheſcun eſt ſon caſtle, ⁊ il doit garď ⁊ defendō č a ſon ꝓfit, et ſi aſcū ſoit robbe in ſon meaſon, ſ̄ arrette a ſon negligence et default demeſne. 2. Ne liſt al aſcū auť de enť in le meaſon daſcū pur le ſafegard de č. 3. Tiel robberie, pur q̄ Hundzed rūder ꝑ foꝛce del dit Act, couient eē apertīnt fait, iſſint q̄ le paiꝭ poit ꝓndr̄ notice de ceo de eux īn (car fuit adiudge in Aſhpoles caſe ꝓchein enſuāt, q̄ ne beſoigū daū aſcū hue et crie, ou notice fait al paiꝭ, neq̄ ꝑ lr̄e del dit act de 13. E. 1. neq̄ ꝑ le meaning de ceo, car poit eē, q̄ le ꝓtie robbe fuit boūd ou maihē, &c. iſſint q̄ il ne poit faiť hue et crie, ou doū notice al paiꝭ mes q̄ūt le robberie eſt ſecretīnt fait en vn meaſon, ilꝭ ne poiēt ꝓzender notice de ceo. Sendils caſe.

Trin. 28. Eliz. in Com banco. Rott. 725.

INter Aſhpole et le Inhabitants de Euenger fuit reſolue per tout le Courť, que coment que Leſtatute eſt generall, et ne fait mention daſcun temps, que le Robberie couient eſte fait in le Aſhpoles caſe.

le temps del iour, et hors del nuit: et la le case fuit, Que vn Robberie fuit fait in Januarie maintenant apres le coucher del soleil, durant day light, et fuit adiudge, q̄ le Hundred respondera, pur ē q̄ fuit temps conuenient pur homes a trauailer, ou destre entour lour oures, ou businesse: Et oue ceo accord̄ le liure in 3. E. 3. tit' Corone 293. que si vn occist auter al heure del vesper, et escape, p̄ l' cōmon ley le ville serra amercie, car ceo est account en ley partel del iour, et nemy del nuit.

Trinitat. 29. Elizab. in Communi banco. Rott' 1027.

Milbornes case.

INter Wilborne, et les Inhabitants del hundred de Dunmow in Essex, fuit adiudge, q̄ pur robberie fait en le matine ante lucem, le Hundred ne serē charge, pur ceo q̄ le robberie fuit fait in le nuit & cōm̄t q̄ nul temps soit, specifie in lestatute, vnē p̄ bon̄ exposition ceo nextend̄ al robbrie fait en le nuit, car nul laches ou negligence poit este arrect al Hundred pur default de bone garder de pais en le nuit, auxy in le nuit ils ne poiēt faire pursuit apres l's offendors, ou inquirie pur eux, & donq̄s a charger eux q̄n̄t ils sont depriue d̄ lour conuenient meanes, serē fort dure. Et (cōe ad este souēt fotz dit aplors est bone exposition dun statute a expounder ceo solonque le reason del common ley: Et al common ley, si vn soit occist in vn ville p̄ le iour, cest a scauoir, cy longe cōe la ē pleine day light, & cesty q̄ luy occist escape, le ville ou cest felonie fuit fait serē amcy pur ceo: et illint est ten' in 21. E. 3. tit. Corone 238. Dum quis felonicè occisus fuit p̄ diem, nisi felo captus fuit, tota villata illa oneretur: & oue ē auxy accord̄ l' dit liure in 3. E. 3. Mes si tiel murdr̄ ou homicide fuit fait in le nuit, le vill' ne serē amercie p̄ le common ley, p̄ ceo q̄ come ad estre dit, nul laches ou negligence poit este arrect al inhabitants de ville: et Dieu ad ordaine le iour pur homes a labourer, trauailer, & a fair̄ lour besoignes, et le nuit a prend̄ lour rest & repose: et pur ē le Prophet dit, Posuisti tenebras, & facta est nox, in qua pertranseunt bestiæ siluæ, &c. sol orit' & congregatsūr, exit homo ad opus & operationē, & reddit vespere: illint sauage beasts passont et repassont in le nuit, et adonques homes ont lour repose, et en le iour homes applont eux mesmes a lour laboures et affaires, et adonques l's dits beasts retire eux mesm̄ a lour dens. Et le Poet dit,

Psal. 104

Vt iugulent homines surgunt de nocte latrones.

Et

Et le cõmon ley eſt, homes ne poient diſt rainepurrent ou ſeruice in l' nuit, cõe il adiudge in 12. E. 3. tit' Diſtreſſe 17. & 11. H. 7. 5. accord mes pur damage le ſant il poit diſtreine in le nuit, pur le neceſſitie del caſe, car auterũt paduenture il ne diſtreinek omnino, car deuãt le iour ils poient eſte priſe, ou eſtray hors de ſon terre: et oue ceo accord 10. E. 3. fol. 21. Eſt ouſter puruiew per le dit act ô Winton. q̃ in cities ou graund villes, q̃ ſont incloſe, les ports doient eſte firme del ſoliel couchant iuſq; al ſoliel leuant: puis quel Statute il in tiel citie ou ville incloſe aſcun murdre ou manſlaughter ſoit fait in le iour ou in le nuit, & le offendor eſcape, tiel citie ou ville ſra amercie, car o ce lact ad chang le reaſon del ley, et p ceo le ley meſm eſt change, car, Ratio legis eſt anima legis, & mutata legis ratione, mutatur & Lex: car al cõmon ley, ſi hom fuit occiſe in le nuit, cõe ad eſte dit, la ne fuit aſcun default in le Citie ou ville, mes ore ils ne gardont lour ports firme ſolonq; le ſtatute, p q̃ le offendor eſcape donq; eſt default et negligence in eux, ſet oue ceo accord le liure in 3. E. 3. tit' Corone 299. ou le caſe eſt pleinẽ fuit, q̃ vn occide auter in le nuit, et demaundõ fuit ou le felon fuit, et ils diſoient q̃ il eſt fue, & pur ceo q̃ il fuit in le nuit il ne doit eſte charge Lowther Juſtic̃, q̃ done le rule dit, le ville ſerra firm̃ p leſtatute de cel heure & pur ceo que les villours de la ville ne luy priſt point, tout l' ville fuit in le mercy. Jury fuit tenus ſur le dit act ô 13. E. 1. q̃ il diũs cõmit vn robberie, ceux del hundred couiẽt apphendõ touts le felõs car conſt q̃ ils apprehendõt aſcun de eux, ceo ne ſufficeẽ de excuſer eux: car les pols del act de 13. E. 1. ſont, q̃ ils reſponõ pur l' corps de les offendors, q̃ in conſtruc̃ fuit priſe touts l's offendors. Mes ore p le ſtatute de 27. Eliz. ca. 13. nouel ley eſt fait in cel poynts inſuants. ¶ 1. Que nul aũa aeẽ ſur le dit ſtatute, ſinon q̃ le ptie robbe cy toſt cõe il poit doneẽ notice del dit felonie al aeẽ des inhabitants dalcũ ville, village, ou hamlet prchein al lieu ou le robberie fuit fait. ¶ 2. Sils in lour purſuit apprehend aſcun des offendors, ceo eux excuſeẽ, conſt que ils ne prendront touts. Vide le dit act de 27. El. que auoit adde al dit act de Winton' et alter ceo in diuers poynts.

Mich. 28. & 29. Elizabeth.

Le Countee de Bedfords case.

EN le Court de Gards le case fuit, q̄ Fraunces Countee de Bedf. estēt seisie de certaine meases in le Strond in le coūty de Midd̄ in tayle, s̄, a cuy et a les heirs de son corps (et seisie dauters terres in fee tenus in capite) per fait indent, fits leases de m̄ les meases dōt il fuit seisie in taile pur 21. ans, rend̄ rent (queux leases ne fueront garrant p̄ le statute de 32. H. 8. mes fuer voidable per lez illues in taile) et mozust, le reuersion (discend̄ a les heires general del dit countee, cestascauoir, a deux files et heirs del Henrie seignior Russel, eigne fits del dit Countee (que Henrie mozust in le vie son pier) et appiert que les dits leases fuer dauer continuance apres que les dits files serra hors de gard: et per Office, puis l' mozt del dit countee, fuit troue, que il mozust seisie del dit estate taile des dits meases, et q̄ eux discend̄ al dits heires general, per force de que les meases fuer seisie in le mains le Roygne. Et in cest case deux poynts fuer resolue. ¶ 1. Que le Roy in p̄tuitie et droit des heires in taile auoidra les dits leases, durant le temps q̄ ils s̄ in gard̄: cōe si euesq̄ fait lease pur ans nient garrant p̄ le dit stat, illint q̄ le lease est voidabl' p̄ le succesl, et mozust, le Roy auoidra le leas, durāt l' vacac̄ del euesq̄, in puitpet dōt del euesq̄rie, car le Roy in nul des dits cases est coē vn estraūg. Et m̄ la ley est q̄t vn subiect est gardien in chiualr̄, si in le dōt del h̄e, deins age et en son gard̄, auoidr̄ voidable leases, q̄t a son interest demesn̄ mes ceo ne p̄iudicer̄ le h̄e de son election al pleine age, car Custos statū hæredȝ in custodia sua existentis, meliorē non deteriorē facere potest. Illint, si l' heir deins age deuant lētr̄ dl' gardein, ou laūcester, esteant deins age, fait leas pur ans rend̄ rēt, le gardien poit enter en le dōt del heir, et auoidr̄ le leas. Mes s̄nīoz p̄ escheat ne auoidr̄ voidable estates fait p̄ son tenant q̄ fuit enfant, car regularm̄t, nul auoidera voidabe estates pur cause d' infancy, sinon

lenfant

lenfant muſſit, ou ſes heires, mes le gardein auodē les dits voidables leases in droit del infant meisme, ſi illint deuerſitie: et le Roy in droit del Eueſq; auoidd le lease, in droit del eueſchey, ſi ad comi auoit conſt q̄ le Eueſq; fuit mort. Et ſi fuit ben de ſes poinſ adiudḡ in Ketheyncer in ſ̄ graund caſe inſ Maſkine & Sr. John Maker an 21 Mariæ, q̄ ſi ceo eſt vera dicta, q̄ ſerr relate pluis alarge in le reſolutiō del 1. point de cell caſe. Vide 16 Eliz. 337. Dier. patentee del roign Eliz. des tres biens al glon, & ſes ſucceſſors a ſuppoſitious vies auoidra apres ſon mort leas pur bien q̄ eſt auoidable p le ſucceſſor fuit p le glon, p le intention del ſtatute de 1. E. 6. de Chaunteries. Vid. 7. Eliz. Dier 229. Hoskins caſe. ¶ 2. Fuit reſolue, q̄ conſt q̄ le Roy in droit del heire ad auoide ceo pur ſon temps, uncore ē ne auoyde les leaſes, ey abſolument ſi les dites in caſe apres l'entere del Roy determine ne poiet faire eny bone p lacceptance del rent: car iact le Roy ne poiet determiner le election & poiuer de ſa illues in caſe, ou del ſucceſſ. del eueſq; ſi le ceſt vies deuiſe, a faire les leaſes bōn p lacceptance del rent. Et quere de leaſes femes void pur un temps. ſert tenus ſicut antea, et quod nemy, caſ diuerſitie fuit priſe & reſolue p le court. 3. quel leas ceo be cely q fuit lamoidant eſt forſq; pur ſa del vie, illint q̄ appiert q̄ un meſme remaine: et q̄ cely q̄ fuit lamoidant auoide tout, uncore ſi illis ſi q̄ appiert q̄ nul reſidue poit remaine: et pur ceo in le caſe al barre appiert apres lentere del Roy determine, la remaine un reſidue del terme: mes ſi le patron del egliſe de D. graūt le prochein auoidance al eſc, & puis q̄ deuiſt ſeiſ. ſi Roigne Eliz. le glon patron, et ordinaric font leas pur ans ren ſolit, et le glon mourit, le grantee pient, q̄ eſt admis inſtitute, & inſtitut, et mourt, ceo leas fuit auoide & tout abſolutelie, & pur ceo tiel leas ne poes eſtoier vers le ſucceſſ. 2. E. 3. 8. fi aduowſon dun egliſe per fraūt ſoit graūt al un p̄ſon & ſes ſucceſſors, et puis un le egliſe deuyſ. apres a luy & ſes ſucceſſors illint q̄ ils ſont p̄petuel p̄ſons in p̄ſonie: in ceſt caſe ſi le feme del grauntee ſoit indow del aduowſon et p̄ſente un Clerke, que eſt admis, inſtitute, et induct, luy p̄ſentation eſt voide a touts tours car lestate eſtant del p̄ſon in p̄ſones eſt auoide, et illint fuit adiudge come Sr. Jeffrey Scroope repoſe in 2. Hil. 3. fo. 8. ſi in tiel ſence eſt le liure deliu inoeuhe. Car memel que ſi feme ſoit indowe del aduowſon, uncore ſi el voil deuie deuant que nemi fuit admit, et inſtitute a meſme leglie a ſon p̄ſentation, leglie remaindra ap̄ p̄ſone: & illint un Quere in 6. E. 6. fo. 72. Dier, eſt bien reſolue. Illint, ſi feme couert (come feme ſole) leaſe ſine aſſent luy de terre dont el eſt ſeiſe in fee a un auter et ſes heires, incell

case fi le baron ne enter, ceo fine liera la feme & ses heires a touts
iours, et in mesme le case fi le baron enter et alien, le comune nu-
nera la terre : car per lentre del baron lentier estate del comune
fuit defeat, et launcient estate la feme remainat in luy : et le baron
seisie del entier estate come in droit la feme : et pur ceo accord 19
Ed. 3. 52. 17. Ass. pla. 17. 9. H. 4. 23. 2. Rich. 3. 20. 9. H. 6. 33. Mes
quant forfeg part del estate ou terme est defeat, in ell autrement,
come in le dit case inter Austine et Sir John Baker fuit adiudg,
quel case come icy mesme ley vieu, in effect fuit, Sir Thomas
Moyat fuit tenant in taile del manor de Estharleigh, in le comte
de Kent, viz. a luy et a les hirs males de son corps, del done le roy
H. 8. a tener de luy in Capite, le reuersion al Roy ses heirs, & suc-
cessors. Sir Thomas Moyat, per Indenture demise le dit ma-
nor al Austine pur 26. ans, et oblant 13. l. et ust al dit Sir Thom
et ses heirs, et puis Sir Thomas Moyat morust, et ceo fuit
trouue per office, et que Sir Thomas Moyat fuit fits & heire
male de pleine age, que quidem Sir Thomas le fits
meres pur son infancie, et puis Sir Thomas le fits
fuit liuere, et accepta l'entier Austine, & puis couenit dent terre-
tenor, pur q il fuit agreed : et issint le case fuit, adiudge, que tant que
le Roy ad auoidy le lease, tanq; a son election il voile affirmer le lease, & apres la
uerie fuit, ell in le election del Roy de affirmer le taile, per acceptance
del rent, daffirmer le lease, pur ceo que le lease fuit fait auoidable per le
Roy forfeg par part del terme, scilicet, il tenant in taile q fuit
et fait le case pur 21. ans, ou 40. ans, rendant rent, que est voydable
per le heire in taile, et mourust, la feme ne poit recouer sa dower, in
cest case le feme auoidera le lease, et nempas, si ad mourust deins le
terme il fitie in taile poit a son election affirmer ou disaffirmer
le lease. Et fuit dit, fi tenant en taile fait lease pur 30. ou 40.
ans, rendant rent, que est voydable per fitie in taile, et puis te-
nant in taile morust sans fitie, son feme primerment enseint une
fitie, per que le baron entra et granta ouer le lease, & puis
le fitie est nee le dener tremor, le fitie a son pleine age poit p accep-
tance del rent affirmer le lease, car le lease ne fuit voyde auxi ab-
solutement, ne simpliciter, mes si forsq; quid, & fitie le mast ex post facto
fuit defeat forsq; pur temps, car fitus in vtero matris, est pars
viscerum matris (Vid. 3. Ass. pl. 3. 22. Ass. pl. 94. 22. Edward tertij in
Corone 180. Stamford fol. 21. Encore le ley in mults cases ad con-
sideration de ley in respect del apparent expectation de son ne-
fitie, vide lopinion & Saunders & Brown in Mr Cotton's case, Plowd.
Com. fol. put moulding dun fine, Vide temps Ed. 1. tit. Gard 153.

& 31.E.1.tit Brief 873. pur le gard luy, Vide 38.E.3. 7. & 42.E.3. et 11.E.3.tit Voucher, q̄ il serra vouch in ventre sa mere, 11.H.6.13. deuise de terre deuisable per custome a vn in ventre sa mere, 41.E. 3. detenuit des chtes pur le heire in ventre sa mere, 3.Eliz. Dyer, 186. adulter counsel la femme de murder lenfant quant est nee, q̄ fait accomp̄, ladulter est accessary, vncore al temps del counsel lenfant fuit in ventre sa mere. Mes fuit dit, q̄ tenant en taile fist lease pur 30. ou 40. ans, rend̄ rent, & puis p̄ist femme, amorust sans issue, sa femme p̄iement enseint oue fitz, et puis la feme recou̇ dower del dit terre, el deuant l' nestre del fitz nauoidera le lease, car son estat est quodam modo vn continuance del part del estate taile, & ceo est pue p 10.E.3.26.34.Ass.p.15. & 23.E.3.Dower 130. q̄ il serr̄ attē- dant del 3. pt de seruices q̄ tenant in taile fesoit, les queux el ne serr̄ si a touts purposes lestate taile fuit tout outerm̄t extinct, et tenant in dower est eins in l' Per, p son baron & eins de son estate. Vide Littleton 93. b. in Discents 38.Ass.26. 7.H.5.3. 8.E.2.Entre 75. &c. Vide Dier 33.H.8.fo.51.b. tenāt in taile deuāt lestatute d 27 H.8. d vses fist feoffem̄t in fee al vse de luy et ses heires, et auxy, deuant le dit act, il et ses feoffees font lease pur ans, rend̄ rent, et puis lestatute il morust, le terre discend a son issue, q̄ deuant entry sur le termor leuy fine al auter: et per le melior opinion des Justi- ces dambideux bankes p̄ter Saunders laltenee ne ceo auoydera, car cōm̄t q̄ le fitz fuit remit, vncore le lease ne fuit meremēt void sans actuel entrie p̄ luy. Vide Pl. Com. 437.

Trinit. 33. Elizab. in Communi Banco.

Vghtreds case.

HEnrie Ughtred armiger port vne briefe de annuitie vers Wilt marques de Winchester fits et heire de John marques de Winchester, et counta coment le dit John marques de Winchest. 20. die Decemb. an 17. Eliz. tam pro bona & fauorabili affectione & beneuolentia quas gessit erga eundem Henricum, quam pro confidentia & fidelitate reposit' in eodem Henrico, per son escript constitute et authorize le dit Henry deste certaine del fort ou bulwarke et Castle de Netley, alias Letley, in Comitat' Southamptō, a auer et exercifer le dit office del Captaine, &c. durant le vie del dit Henrie, et donoit a luy authoritie durant cō vie a nominater & appointer de temps in temps vn master gunner, vn porter, et 6. souldiers, &c. Et ouster, p meliꝰ escript, l dit John marques grantea, pro consideratione p̄dicta, & pro meliore manutentione ipsius Henrici & magistri tormentoꝝ, & sex militum in defensione & tuitione castri prædicti, pur luy & ses heirs al dit Henry, durant son vie vn annuitie de 32. l. &c. al feasts de S. Michael l'annunciation ō nostre Dame, p equal portiōs: p force de quel il fuit seisie del dit office et del dit annuitie pur son vie: et puis 10 Nouembr' an. 18. Eliz. le dit John marques mourust, et le defendō, son fits et heire, le dit annuitie, per 11. ans deuant le briefe purchase, subtrahe, q̄ in tout amount a 368. l. &c. Sur quel count le defendō demurr' en ley, et solongz le statute mesme diuers causes: 1. p ceo q̄ nappiert per le count que le dit John seignior marques ad power ou interest a granter le dit office, et auxy pur ceo que le pl' nad auerre q̄ il ad exercise le dit office, ne q̄ il appoint vn master gūner, porter, ou les soldiers, et diuers auters causes fuer mese: meg hijs non obstantibus iudgement fuit done p les Justices del Common banke pur le pl'. Sur que le seignior marquelle port

briefe

briefe ō Error, et diuers errors fuer allegue, mes touts fuer ouertule p le court forsq̄ vn, et ceo fuit q̄ le pl̄ in le briefe de annuitie nad auerre in son count q̄ il auoit exercise le dit office, &c. Mes apres pluiors arguments et consideration de touts les liures, in queux (come semble prima facie) est diuersitie des opinions, fuit resolue q̄ le count fuit bone sans tiel auerm̄t. Et iour reason fuit, q̄ in touts cases quant vn interest ou estate commence sur condition precedent, soit le condition ou act deste perform per le pl̄ ou defend̄ ou p alcun auter, et soit le condition in laffirmatiue ou negatiue, la le pl̄ couient a inke ceo in son count et auerre le performance de ceo, car la linterest ou lestate commence in luy per le performance del condition, et nest in luy tant que le condition soit performe: mes auterment est quant le interest ou estate passe maintenaunt et vest in le grauntee, et est deste defeat per matt̄ ex post facto, ou condition subsequēt, soit le condition ou act deste pform p le pl̄ ou defend̄ ou per alcun auter, & soit l̄ condition in laffirmatiue ou negatiue, la le pl̄ poit counter generalm̄t sans m̄kans del performance de ceo, et ceo serra plead per cestuy que voet prender aduantage del condition ou matter ex post facto, car chescun doit alledge ceo que fait pur luy, & q̄ est pur son auaile, & nul serra chase dalledger ceo que fait in count̄ luy. Et bien poit estre que le condition subsequent, ou matter ex post facto, estoit sur mults partes (come in le case al barre ceo happa) queux touts a rehearser serra tedious, quant issue ne serra prise forsq̄ sur vn de eux, et le def. poet pleader quel vn de eux il pleist in barre del action, et issint l̄ pleading serra pluis briefe et compendious, que est le pluis commendable, si ceo soit sufficient. Jry in le case al barre le condition fuit deste perform per le pl̄ mesme, et pur ceo l̄ case est pluis fort, mes pur ceo q̄ le pl̄, per le dit graunt, fuit maintenant seisie del office et del annuitie pur terme de son vie, le quel couient estre defeat per le non vser del Office ou auter matter subsequent, le matter subsequent fait incounter luy, et pur ceo serra plead per l̄ defend̄: et oue ceo accord̄ 15. H. 7. fol. 1. in briefe de annuitie vers successor dun prior, sur grant fait per son predecessor tanq̄ il fuit aduance a vn benefice de S. eglise, et le pl̄ count generalm̄t sauns dire, que il est vncore aduance: et exception fuit prise a ceo pur tiel cause, et nient obstant le cōit agard bone, pur ceo q̄ l̄ condition va in defeasance del annuitie, le quel viendra del part del defend̄ deste inke: auxy, ceo est annuitie que commence auāt q̄ l̄ condition serra performe, le quel performance viendra del part del grantor, et nient semble ou l̄ condition fuit, q̄ si le grantee face tiel act que donques il auera tiel annuitie, ore il voet demaund

ceo

ceo il couient alledger in fait q̄ le condition est perfozme, car per le perfozmaunce de ceo lannuitie commence: et illoz diuersitie p̄ omnes iusticiarios, et ceux sont les paroles del liure. Illint est dit in Colthirsts case Pl.com.25.b. Si ieo grant a vn q̄ quant il serra pzo-mote a vn benefice, q̄ il auer annuity, sil demaund annuitie il doit pzimes mke que il est pzomote a vn benefice: mes si lannuitie soit grant a vn tanque il soit pzomote a vn benefice la si auera briefe de annuitie: et ne fire q̄ vncoz il nest pzomote, pur ceo q̄ lannuitie pzecedo, & le pzomotion est subsequent, & va in defeasaunce del annuitie; et pur ceo doit estre mke del contrarie part. Mes quant home nest pas intitle forsque a vn action, et cest action ne gist sinon le condition ou consideration soit perfozme, la le pl̄ in son count doit mke le performance, car ceo amount a vn condition pzecedent, pur ceo que laction commence sur le condition ou consideration perfozme, come le liure est in 3.H.6.33.b. Wittomus que ieo retaine vn home dal oue moy al Rome p̄ 40.s. icy p̄ le aler comence pzimerint le cause del dutie, in quel case sil pozt briefe de det de cel, in son coūt il couient declare q̄ il fuit la, ou autrefits le count abatera. Illint est, si ieo retaine vn de seruer moy pur 40.s. per annum, car icy per le consideration perfozme cōmēce le dutie, illint que ceo est in nature dun act pzecedent: et sic fuit lopinion de tout le court in le dit liure. Wez l' case in 48.E.3.3.& 4. fuit affirme pur bone ley, ou appiert q̄ indentures fuer faits int̄ Sir Rafe Poole chiualer de lun part, et Sir Rich. Tolcelser ōl auter part, per queux Sir Rafe couenant oue Sir Rich. de seruer luy oue 3. esquiers des armes in la guerre de Fraunce, & Sir Rich couenant pur ceo a paier a luy 42. marks: in cest case chescun partie ad oiel remedie, lun pur le seruice, et lauter pur ses deniers, et pur ceo, in det pur les 42. marks, il poit eslier ō counter in general ou in special, a sa volunt, per le rule del court. Auxy quant vn interest passe maintenant et est destre defeat per matter ex post facto, vncoz sil appiert al Court per matter en Ley, que laction ne serra maintenable saungs mkans del performance del condition ou consideration, la le pl̄ couiēt dauerrer ceo pur maintenance de son action, come in 39.H.6.21.22. l' case fuit, R. abbot de Chester grant a John Bzewin al per son fait saūs le consent del couent) vn annuel rent de 40.s. hozs de son monasterie pro cōsilio suo eidē R. abbati & conuentui eiusdem loci impenso, & imposterum impendend': le dit R. abbot mozust, et John Bzewin pozt briefe dannuitie vers le successoz, et auerre, que il auer done al dit R. nup̄ abbati & conuentui consilium suum, apud W. in negotijs domus prædict. agendis ad proficuū eiusdem domus: et Prisot & tout le

court

Court tient q̄ laction ne fuit maintenable vers le successor sauns tiel auerment, car laction nest maintenable vs̄ le successor, de nul contract ou graunt fait p̄ l'Abbot solemēt sans le Couent, sinon q̄ le effect ou consideration de ceo vient al p̄fit del meason; & que tiel grāal auerrem̄t fuit bone, car ceo trope longe a mē tout s̄ les causes spēciales, et pur ceo vers le successor il doit p̄nder tiel auerrem̄t: Quod nota. Action vers l'Abbot mē, que nul le grant, ne besoigne de graūter tiel auerrem̄t, come est agree la p̄ tout le court. Et nient q̄ cest auerrem̄t, 1. Inter interest ou estat vest, & q̄ est dest vest p̄ condition ou matt̄ subsequent, & condic̄ ou matter que p̄cede lestate ou le interest, 2. Inter chose in action q̄ in iudgemēt del ley est a commencer sur condition ou consideration p̄cedent, et interests ou estates q̄ commence maintenant, 3. Quant nul remedie est done al ambedeux p̄ reciprocal conenants, 4. Quaunt per matter apparent laction le pl̄ ne serr maintein sans auerrem̄t, cōme q̄ soit in case dun estate ou interest vest, vous mieulx entendres ces lures, q̄ semblent prima facie a discorder. 21. E. 4. 29. 22. E. 4. 43. 9. E. 4. 20. 37. H. 6. 8. 36. H. 6. 2. Dict. 10. Eliz. 270. in Anowrie. & 15. Eliz. 329. in Dette.

Et nota. le dit Vghtred fuit iudgeat in le common Bank, Quod p̄dict' Henricus recuperet versus p̄fatū nunc Marchionem, annuum reddit' p̄dictum & arreragia eiusdem, tam diuante dic̄ impetrationis hūs original' p̄fius Henrici, quā postea incursa, & damna sua occasione subtractionis annui reddit' p̄dict' ad decē libras, eidem Henrico ex assensu suo per curiam hic adiudicat': Quæ quidem arreragia & damna in toto se attingunt ad 402. lib̄. Et p̄dictus nunc Marchio in misericordia.

Mich.

Mich. 33. & 34. Eliz in Scaccario.

Englefields case.

Ater le Roigne, et Margaret Englefield, Frances Englefield, et autres. Information fuit intitulat in Scacc. apres, ore tenus Tr' 32. Eliz. le case fuit tiel in effect. Sers Frances Englefield feisie des maners de Englefield in Com' Berk. in fee, per Indenture dated 2. Ianuarij, an' 18. Eliz. inter luy & le dit Frances de Newnew rouenant per aduenterous de son liuer, &c. a conuer le dit al dit de luy vse fine pur vie, et puis al vse de dit Margaret, et les heirs males de son corps, et puis al vse de Frances le pere. Et fuit ouster couenue in le dit indenture, q̄ si ceo q̄ fuit Margaret, illeint q̄ son mariage ne alienes fuit pleine, et pur ceo le vncle ne pusse commencer a forfeiter le dit auowtrance en le reuersion absolute cest lymgement coulor le vncle issue roit, sans frene pur restrayner luy, si vides il fuit bigamist, ou ferra vers al intollerable biens: a ceo issint fuit pose, q̄ si le vncle q̄ luy mesme ou per aliens auter, durant son natural vie, deuiser, ou offer al nephew, ou auter male del age, al intent de faire void les gifts, que dones touts les dits ferk poise, Hill' 26. Eliz. Sir Frances fuit outlet in bank le roy, p enditt de Leyton, pur Treason fait al Nemures in Hanonia in ptibus transmarinis, 20. Octob. 18. Eliz. sur q̄l indictment il fuit bringe: et puis 8. Augusti, 28. Eliz. le roigne, per patent desouth le grand seale, isslie le ferk al Foster et Fenton, deux de les def. pur 40. ans, a auxy lauiesa al cuppur 40. ans, omnes & singulos boscos subboscos, arbores, & terras boscales: et puis al pliament 29. Octo. an. 28. Eliz. lattaindr fuit confirm: et ouster fuit enact, q̄ il ferk attaint de hault treason, et forfeiter al roigne touts les manours, terres, tenements, &c. le iour de le treason comis, ou a alcun temps apres, et q̄ fera in actuel possession le roigne sans office: Mes ouster fuit parcelm q̄ si le act, q̄ touts in ceo extenderoit a faire void alcun lease de terres, ou dones de biens, fait p le roigne south le grand seale ou leschequer seale, puis le treason fait, &c. Et a ceo le pliament vn auter act fuit fait, per que fuit enact, That euery person and persons, which hath, or claimeth to haue any estate or interest, of, in, or out of any land of any of the persons attainted since 18. Eliz. not inrolled

led of record, nor certified into the Exchequer, made since 1. Eliz. by any of the persons attainted since 18. Eliz. of treason, for conspiring of the Queenes death (**come le dit treason de Sir Fr. Englefield fuit**) within two yeares after the last day of this Session of Parliament, shal openly shew, and bring forth, into the Queens Maiesties courts of exchequer, the same, his or their grant, conueiance, and assurance, and there in the terme time, in open Court, the same shall offer and exibit, or vpō his, or their oth, affirming that they haue not the same, nor can come by it, or that it was neuer put in writing, then the effect therof to be entred and inrolled of record, or els euery such conueiance & assurance should ba void and of none effect to all intents and purposes: Sauing to euery person and persons (other then parties and priuies to such conueiance, and such as shall not exhibit the said conueiance according to the true meaning of this act) all such right, &c.) **Et puis** 17. Martij. 31. Eliz. **le Roigne, per ses lres patents desouth l' grād seale, recit antles vles, & le prouiso del tendering dun anule, & que le benefit & aduantage del dit condition est done a luy per les statutes de cest realme, depute, authorise, et in son lieu et person admis Rich. Broughton & Henrie Bouchier ioyntment et seueralm̄ pur deliuer ou offer le anule de oze al Englefield le Nephew, al intent de faire voide les vles in lendentures, et que ils certifier̄ in Lexchequer ceo que ils fairont in les prēmisses. Broughton et Bouchier** 18. Martij, an 31. **offer le anule** (et lie a luy le patent) **al dit Frauncis le nephew, quel il refusa; tout quel fact oue le patent ils certifiont in Lexchequer** 19. Martij. 31. **Et le vie de Sir Frances fuit auerre, &c. Et les def. fuer̄ charge pur intrusion** 20. Martij 31. Eliz. **et oue le succider de certaine trees de elme et ash, et de certeine subboyes. Et en cest apres plusors arguments al barre, et sur ouert argumēt al bench, ceux poyntz fuer̄ resolue. 1. Le Roign̄ fuit tenant pur auk̄ vie, et fist leas pur 40. ans, com̄t que le roigne (ataint forsque estate p̄ auter vie) ne poit absolutement contracter pur leas pur 40. ans, vncore sans aleun recitall ou mention de estate pur vie, le leas est bone, car le leas pur ans est in iudgemēt del ley meinder q̄ leas pur auter vie, & le Roigne ne fait aleun tort ou p̄iudice a aleū per le demise, et nest Deceiue in son graunt; car in iudgement del ley, ceo est leas pur 40. ans, si cesty q̄ vie cy longe mēt viuera: Mes si le Roigne vst graunt greinder estate que el loyalm̄t poit, come estate en taile, ou infee, la pur ceo que el ne poit loialm̄t ceo faire el fuit deceiue, & per cōsequent̄ son graunt voyd.** Vide oze le case de Alton Woods, in le primer part de mes Reports **Et fuit dit, q̄ si le Roign̄ grant** totū statū suū (**ayant term̄ ou estate pur vie, extent, ou auter ptieuler estate**) **q̄ ceo est assets bone, car le**

Roign̄

Roigne ne graunt pluis q̄ il poit p̄ la ley, ne fuit aſcun tort ou alteration daſc̄ eſtate per ſa grant. Et fuit obiect, que ceſt condition ne ſerra done al Roigne per leſtatute de 33. H. 8. ca. 20. et ceo pur 3. reaſons. ¶ 1. Ceſt condition eſt annexe al Sir Fraunces oue tiel inſeperable p̄iuitie, que ne poit eſte done al auter: car in ceſt caſe le ſubſtance del condition eſt le entent et ment d̄ Sir Frances pur ceo q̄ ſon entent & ment ne poit appearer ſans ouert act, a ceſt cauſe le anule ſerra tender come declaration de ſon entent, q̄ fuit inward & ſecret a luy meſme, iſſint q̄ le tender del anule neſt forſq̄ le outward ceremonie, mes le ſubſtance del condition eſt le ment & volunt de Sir Frances, que ne poit eſte tranſferr̄ al auter. Auxy in ceſt caſe, nature eſt fait Judge, car le vncle eſt dadiudger del qualitie et diſpoſition del nephewe, & le quel il done cauſe a ſon vncle a reuoker et diſannuller ſon eſtate, et pur ceo, ſic̄e natural amour et affection ne poit eſ̄ tranſferre al auter, iſſint ceſt conueiance, de q̄ natural amour et affection eſt le cauſe de creater de ceo, & le judge del determination de ceo, ne poit eſte reuoke ou determine p̄ aſcun auter, et tout ceo accord̄ oue le reaſon del common ley: Car le garde del eigne fits, q̄ le ley de natur̄ done al pier eſt inſeyable, et ne poit eſte forfeit de tranſferre al auter, come eſt, agree in 33. H. 6. et homage auncestrel eſt in ſeperabl̄, pur ceo que ceo eſt annexe al ſanke del Sir & del tenant. ¶ 2. Per general paroix del dit act de 33. H. 6. conditions ſeperable, & q̄ poiēt eſte p̄forme per auters, et nemy inſeperable, ſont done al Roye, come appiert per diu̇s cafes foundus ſur geñal acts de pliaments icy mis, et agree ap̄s. ¶ 3. Fuit obiect, Que ceo eſtreant vn collateral condic̄, conſt q̄ le cōdition ſoit done al Roy. s. le benefit de ceo, ſi ceo ſoit p̄form, vncor̄ le perform̄ance de ceo neſt pas doñ al roy p̄ le dit act: & pur ceo Sir Fr. couient tender le anule, et nemy le Roygne. Et pur ceo, poſito q̄ le condic̄ voſt eſtre, ſi le chiefe Juſtice Dengleſtre pur le tēps eſteant, tendra vn anule, ap̄s latraind̄ del Sir Frances, le Roign̄ ne poit tender: & le reaſon de les liures in 12. H. 4. 2. &. 9. H. 7. 17. & 20. 4 H. 8. Dyer 1. &c. fuit vſge, ou collateral conditions ne poiēt eſt̄ alter, & auks choſes accept̄ & ſatiſfaction de eux inter ſi les p̄ties: à fortiori icy, car icy le p̄ſon q̄ p̄ expreſſe poix doit p̄former le condic̄ ſra chaunge. Quant al 1. & 2. objections, Manwood chiefe Baron, & tout le court teignont, que tout le force & effect del condic̄ in le caſe al barre conſiſt ſur le tender del anule, et lauter matter del reaſon & cauſe, que moone et induce luy de layſer le dit power & frene in luy meſm̄, ne fuit aſcun parcel del p̄uiſo, mes vn floriſh, come ſi ceo terme, & preamble, et riens eſt parcel del condition, mes ceo que vient apres le

puiſo

quiſo, et ceo eſt le tender del anule. Et quant a ceo, le dit diuerſitie fuit priſe et agree per tout le Court, ſ. inter conditions que ſont perſonel et individual, et ne poyent eſte perform per aſcun auter, et conditions q̄ ne ſont ry inſeperablem̄t annexe al perſon, mes q̄ ils poient eſte plorme per aſcun auter, come fuit reſolue, in le caſe de Thomas Duke de Norff. que in Anno 11. Eliz. conuey ſes terres al vſe de luy meſme pur vie, et puis al oeps Philip Countee de Arundel ſon eygne fits in tayle, oue diuers remainders ouster, dies prouiſo, queſil ſerra minded de alter et reuoker les dits vſes, et ſignifier ſon ment in eſcript deſouth ſon proper maine et ſeale, ſubſcribed per 3. credible witneſſes, que donques ſic, et puis le dit Duke fuit attaint de hault Treaſon, que ceſt prouiſo ou condition ne fuit done al Roygne per le dit act de 33. H. 8. pur ceo q̄ le perform̄ance de ceo fuit per ſonel et inſeperablem̄t annexe al perſon, ceſtaſcauoir, a ſignifier ſon ment per eſcript deſouth ſon proper maine, que nul auter poit faire, mes le Duke meſme; Dun q̄ point touts les poſſeſſions del Dukedome iſſint conuey vt ſupra, fuerent ſaue, et nemy forfeit per ſtatainder. 33. H. 6. 56. Les Templers teignont diuers de lour poſſeſſions in franckalmoigne (quel tenure come Litt. dit, eſt annexe in priuitie al ſanke le donor) et puis ils fuer̄t diſſolues, et per parliament An. 17. E. 2. lour poſſeſſiōs fuer̄t done al Hoſpitalers, a tener eux in meſme le manner come les Templers teignont, vncore ils p̄ ceux geſtal paroly ne teigneront in franckalmoigne, pur ceo q̄ le priuitie del tenure oūpt lert ſi ne continue, et ceſt priuitie eſtreant ſonel, a inſeperable, per general paroly del act, ne fuit transferre al Hoſpitalers. Meſme le ley dun impropriation dun Egliſe, que nuy eſt incident inſegable al meaſon de Religion a que leſgliſe eſt impropriate: Et pur ceo eſt adiudge in P. 3. E. 3. que les Hoſpitalers p̄ le dit act de 17. E. 2. naueront le impropriation, car ceo fuit inſeperablem̄t annexe al corporation des Templers, quel choſe, conſiſtant in inſeperable priuitie, per general poly dun act de parliament ne ſerra transferre al auters. Iſſint fuit adiudge Trin. 25. Eliz. in le Marques de Wincheſters care, (quel vide in le 4. part de mes Reports) q̄ per geſtal paroly de touts heredit aments, &c. in briefe de Error que vn ſon attaint auoit ne fuit done al Roy, car bre de Error eſt bre q̄ giſt in priuitie: Et le chiefe Baron dit, que ſi ne vepe vnques in aſcun act de attaindr, actions q̄ appent al perſon attaint done al Roy. En temps H. 8. Brooke tit' Corodie 3. eſt cenus, que vn Founderſhip, q̄ nuy eſt choſe annexe inſeperablement al ſanke del foundor, ne ſerra forfeit per attainder, vide 1. 3. Edw. 4. Mes in le caſe al dar̄, le condition, ſ. le tender del

mule, nest pas annexe al person de Sir Frauncys, mes chescun auter poit ceo faire eisbien come luy mesme. Mesme la ley de payment de money, deliuerie de esperons de oxe ou auters semblies. Quant al 3. obiection fuit resolue, q̄ quant le statute done le condition al Roigne, q̄ le performance de ceo (que nest pas personel et inseperable) est done auxy al Roygne, come incident a ceo: car le performance est le substance et le effect del condition, et lestatute mit le Roy in le lieu del person attaint a faire ceo que le performāce del condition que est feasible, & q̄ nest pas inseperablement annex al person de cestuy q̄ est attaint. ¶ 4. Fuit obiect, que coment que le condition serra done al Roygne et le performance de ceo auxy, uncore le leas ne serr void, car lestate pur vie de Sir Frances ne fuit subiect al condition: car un vse al common ley fuit un trust & confidence repose in un person, q̄ auter person auera ley, pfits, tellint q̄ couient este seperation del possession, et del vse, ou per couenant, ou per feoffement fine, ou auter conueiance, y que est un transmutation del possession: mes in nre case, il mesme est person seisie al vse de luy mesme pur vie, que ne poit este come un vse, car il mesme est terre tenant, et nest ascun seperation del possession, et nest ascun trust ou confidence, & il ne poit auer Subpena vers luy mesme adeuant le statute, & le statute de 27. H. 8. execute possession a cestuy solement que ad un vse, et que nad possession deuant: mes Sir Frances in nre case ad le possession deuant, et pur ceo le statute ne poit doner possession a luy, mes son estate pur vie fuit parcel de son veiel estate. Auxy nota, lestatute de 27. H. 8. dit, al vse dun auter person, &c. tellint que auter person couient dauer le vse que cestuy que ad le possession. Et Vide 30. H. 8. tit. Feoffements al vse Br. 47. cestuy que vse in taile deuant lestatute fuit infeoffe per ses feoffees, & puis lestatute de 27. H. 8. fuit fait, lestatute ne donera a luy possession in taile solonque le vse, p̄ ceo que il ad le possession deuant, pur ceo que ne fuit seperation del vse & possession al temps del feasaunce del statute. Et donques si lestate pur vie soit parcel de son veiel estate, ceo nest pas subiect al dit proviso ou condition, et per consequence per le performaunce de condition lestate pur vie nest defeat, et donques le leas pur 40. ans que est deins hors de ceo remaine bone. Mes fuit resolue per le Court, que Sir Frauncys ad lestate pur vie per le limitation del vse et operation del Statute de 27. H. 8. et ils mult reliont sur le reason et rule de Baintons case in Plowd. Comment', que home pur aduancement de ses heires males poit couenaunter, a estoier seisie al vse de luy mesme & ses heires de son corps: in cest case est nul seperation del possession & vse, & uncore

lestatute

leſtature create vn eſtate in taile in poſſeſſion in luy, in quel caſe tout leſtate taile eſt in luy meſme. Mes ceo eſt pur le benefite del heire male, coment que il eſt in futuro, et nemy in præſenti, car nul poit ſcinter que ſera ſon heire male, car ſolus Deus ſcit hæredes ſon homes: Mes in tiel caſe ceo eſt pur le benefite del Feoffee in præſenti, donor les vies taile ſolonque les dits Indentures. Q. Fuit obiect, que coment que leſtate pur vie ſoit defeate per le condition, uncore le Roygne ne auoidera ſon leaſe demeſne: Car quaunt le Roygne ad Eſtate pur auter vie, et auxy condition in luy per leſtatute de tricesimo tertio Hen. octaui, et il fait leaſe pur ans, coment que le Roygne performe le condition, il auoidera le leaſe. Come il in tiel caſe vn common perſon eſt eſtate pur vie, et le Roygne le condition, et le common perſon eſt faite leaſe del terre, et le Roygne eſt conſtreine ceo, et puis le condition eſt performe, uncore le leaſe eſt bone. Et il le mortgagee fait leaſe pur ans, et le mortgagor conſtreine ceo, et puis le condition eſt performe, le leaſe ne ſera auoide. Et la caſe dun Arden fuit cite. Tenaunt in Taile fait leaſe pur vie, ore il adgaine nouell fee per tout et puis il graunt tout charge, ou fait leaſe pur ans, et puis Tenaunt pur vie morust, il auoydera la charge, ou leaſe, coment que il ſoyt eins dun auter eſtate, pur ceo que il auoit defenſible poſſeſſion, et auncient droit, le queux il ſoyent in ſeuerall maines ſera bone, come leaſe de tout, et confirmation de lauter, et eſtraunt in lun maine, ſera taunt in iudgement del Ley. Nota, le leaſe eſt pluis fort caſe que le charge. Vndecimo Hen. 7. 21. Eodem Tenaunt in taile, fait feoffement a ſon fits cue condition, et puis ſur ſon Recognifaunce le Terre eſt extende per Leſtatute de primo, Richardi, et puis il performe la condition, uncore le intereſt del Conuſeene ſera auoyde, et uncore le ſtate eſt chaunge, Cauſa qua ſupra. Et tout ceo fuit affirme per Curiam. Mes quaunt a ceo fuit reſolue, Que le demiſe le Roygne ne enurera (a ſon ſpeciall preiudice) a 2. entents, ſ. a vn demiſe del Terre, et auxy a vn ſuſpenſion de ſon Condition, per que el poit defeater leſtate pur vie, et les auters eſtates, come ſera in le caſe dun common Perſon, ou a vn demiſe in reſpect de ſon preſent eſtate pur auter vie, et auxy a vn confirmation in reſpect de ſon condition, per que autrement el poit defeater tout, come ſera auxy in le caſe de common perſon: Car le graunt le Roy ſerra pluis ſolonque ſon expreſſe intention comprehende in ſon graunt, et ne extendera a lauſein auter choſe per conſtructi-

tion, ou implication que nappiert per ſon graunt que ſon entent eſtoit; et pur ceo in tielx caſes, le Roy couient eſtre bien informe, et il doit faire eſpecial et particular grant, que per cel ſes parols poit enure a tielx generall intents come ſont deſire. Come in 17. E. 3. 39. Abandon ten' del Roy eſt alien a un Abbot, ou le Roy ad title al abandon pur le mortmaine, et puis le Roy preſes Letters patents graunt al Abbot que il poit tener labe nowlon in proper ops, uncore il ne pudra abandon gr del mort maine, car quant le roy ad, il poit ſeiſe luy de ambedeux ſauns ſpecial parolx. Vide 9. H. 7. 14. Plowd. Comment. 397. &c. Et ſi in ceſt caſe le demiſe le roign amoyntera a un confirmation per force de ſon condition, ou title demiſe amountoit a un ſuſpenſion del condition, dauncyent ſur ceo enſuera, que el durant le terme ne poit perfourmer le condition, quel ſerra grandment preiudicial al Roy. Cur. Et quant aſtoit tender per force des dits Letters patents, et le certificate del ceo in Ketchequer, fuit obiect, que ceo ne ſerra ſufficient, mes le tender couient eſtre trove per Office, car combien que les Letters patents ſont de record uncore le tender meſme eſt matter in fact, quel couient eſtre trove per Office: Car certificate de Eueſque per force del briefe le Roy, ou del Marſhall del hoſt le Roy, come in 2. Edw. 4. folio 1. queux et auteil ſemblables ne ſont trauerſable, mes ſont trials in ley, et per les parties: Mes in noſtre caſe, ſi ceſt certificate, que deſſ fuit fait per aſcun ordinarie counſe de procedeng, ſerra bon en ley, ſerra grand preiudice al partie; car nul certificate que eſt allowe et gerant per le Common Ley eſt trauerſable, et donques le matter poyt eſtre faux, et le party diſherite, et becauſe il nauera aſcun remedie, le quel ſerra inconvenient. Mes fuit reſolue per totam Curiam, que le tender et certificate en ceſt caſe fuit aſſets ſufficient, eſquels le partie greeue ſi ceo ſoit faux, poyt trauerſer ceo, et ne ſerra conclude per ceo, come ſoit en nature dun tryall: Mes dun record a informer et ſatiſfier le Roygne de ſa Title. Juſtices reſolvent, que maintenant per le tender del annule ſolonque le dit promiſe, ou condition, les vſes fueront determine, et nul en Ley, et per conſequence, le Terre veſt in le Roigne per force del ſtatutdye et del act de tricesimo tertio Henr. octaui. C. 7. Fuit obiect, Que le dit conuſeance fuit voyde per le dit Act de 28. Elizabeth. et donques fuit Soit Feaunces al temps de ſon Treaſon commis et attaindye ſur ceo ſeiſe des dits terres in fee, queux fueront forfeit al Roygne, ſi veſt in luy per le dit act de 33. H. 8. ſi per conſequence

le dit leas fait per le Roigne (eſtimit al temps de ſtatuunce de ceo ſeiſie in fee) eſt bones & a pzouer que le conueyance fuit void per ieſtatute deuant le dit tender del anule, iſſint que leſtate ne fuit deſeate per le condition, mes le conueyance in que le condition fuit conteins fait voithe per le act de 18. Eliz. deuant le dit tender del anule, & deuant le leaſe fait; le letter del ſtatute eſt, Ꝙ chelcun perſon &c. within two yeares after the laſt day of that Seſſion, ſhall openly ſhew and bring forth into the Exchequer his conueyance, and there in the Terme time in open Court ſhall exhibite &c. the ſame to be entred and inrolled of Record, &c. & le tender del ring fuit 18. Martij anñ 31. deuant quel iour touts les termes in les 2. anys fuer paſſe, iſſint que apzes Hillary terme paſſe Anno 31. ne fuit poſſible que le conueyance ſerra inrolle deins les 2. ans in open Court in le temps del terme. Car les 2. ans paſſer per eſſluction de temps deuant Eaſter Terme, & pur ceo maintenant apzes Hillary Terme paſſe le conueyance fuit voide, & per conſequence le condition auxy. Et ſur ceo le caſe in temps Ed. 1. tit' Couenant 29. & Fitz. Nat. Bꝛe. fuit mis, que coment que le couenant ſoit que il layſer le boyes in cy bone plight, &c. al fine del terme, ſi le leſſee ſuccide les arbzes, il auera couenant maintenant, car neſt poſſible que il layſe les arbzes, &c. al fine del terme, iſſint que le impoſſibilitie del act donera pzeſent action ſur future couenant. Mes fuit reſolue per le Court que al temps del tender del anule le dit conueyance (& per conſequence le condition) fuit in force; & lour reaſon fuit pur ceo que leſtatute ne require que le inrollment del conueyance que eſt iact del Court ſerr deins les 2. ans, mes le monſtrans & exhibitting de ceo que eſt iact del party couient eſtre deins les 2. ans, car quant al monſtrans et exhibitting del conueyance les paroll ſont (within two yeares, &c. ſhall, &c. there in the terme time in open Court exhibite the ſame) donques les paroll pzocheine enſuants ſont (to be entred and inrolled of record) iſſint que nul temps eſt limit quant ceo ſerra inrolle, mes il les paroll auoient eſte, and then and there ſhall be entred and inrolled of record, donques le conueyance couient dauer eſte inrolle deins les 2. ans, mes, coms les paroll ſont, ceo poyt eſte inrolle apzes les 2. ans paſſe. Et ceo fuit le pzimer caſe (dont ieo ay notice) ne fuit argue et adiudge ſur le dit act de 33. H. 8. que done conditions de perſons attainted de Treaſon al Roy. Et in le argument de ceſt caſe le caſe de Thomas Markenfield armig Anno 19. Eliz. in Lecheque, & diuers auters caſes des perſons attainted de Treaſon, queux auoyent power de reuocation, fuer cite,

Trin. 34. Eliz.

Case de Swannes.

Fuit le Roigne Wadam Joan Young tades le feme de Sir John Young Chivaler decease, & Thomas Saunger del. le cale fuit tiel. Un officer fuit trove al W. in le County de Dorf. 18. Septemb. Ann 32. Eliz. devant Sir Wal. Arundel & auters commissioners del Roigne devoutly le grand seale, Qd à villa de Abbotsbarie in predict comitat' Dorl. vsq; ad mare p insulam de Portland in eodem com et quedam estuaria, Anglicè a Were di Flete, in quam mare fluit & refluit, in qua quidem estuaria sunt 500. cigni, quorum 410. sunt albi, & 90. sunt cigneti, & quod omnes prædicti cigni & cigneti sunt in possessione Iohannæ Young & Thom. Saunger, & quod quilibet eorum est valoris 2.s ,6.d. quodque major pars tempore exceptionis dictæ inquisitionis minimè fuer' ligat' : quel office estant certifie in Leschequer, un brefe fuit direct al Viscont de mesme le Counte a lever tours les dits blanche Swannes mentionn' in le dit, per force de que le Viscont certifi, que il ad leve 400. blanche Swannes, &c. A q pais, s. Hillar 34. Eliz. les dits

Joan

Joan Pontz & Thomas Danuger pleade, Q̃ pred' [illegible] aqua, iacent in parochia de Abbotsbury, [illegible] abbott ceo, & ideo mant le inquisition prise, Abbot de Abbotsbury [illegible] finitus de pred' [illegible] & de ripis & fundo eiusdem tenet, & que al temps del inquisition, & de temps dont, &c. [illegible] volatus cignorum & cignettorum, vocat' a game of wilde Swannes, in estuaria siue aquâ illa, & ripis, & solo eiusdem nidificant', gignen', & frequentan', Anglicè haunting, de quo quidem volatu cignorum & cignettorum, prædict' Abbas & omnes prædecessores sui Abbates Monasterij prædict', per totum tempus prædict' habuere & gauisi fuerũt, & habere & gaudere consueuerũt, quo pisces & increment' eorundem & volatus cignorum & cignettorum tam in estuaria prædicta nidificant', gignunt, & frequentant, quàm quidem cigni & cignetti per totum tempus prædict' fuerunt feræ naturæ, & infra idem tempus idem cigni & cignetti [illegible] aliquo signo non visi fuissent, nec consueuissent signari, nisi q̃ prædict' nup' Abbas & prædecessores sui pl'a', per totum tempus prædictum [illegible] quosdam seruientes aliquos de minoribus cignettis annuatim pullulãt', quos ad vsum & culinæ & hospitalitatis suæ statuerunt expendend', in hunc modũ annuatim signare consueuerunt, & vsi fuerunt, videlicet amputare medietatem vnius alæ, Anglicè to cut of the pinion of one wing, cuiuslibet talis cignetti, ea intentione, quod cignetti sic amputati minimè valerent auolare. Et puis le dit Abbot surrender les premisses al Roy H. 8. que fuit 35. de son reigne graunt al Giles Strangwayes armig̃ per ses lettres patentes, (inter alia) totam illam liberam piscariam nostram in aqua vocat' the Fleet in Abbotsbury prædict', ac omnia messuagia, aquas, piscar', ac cætera hæreditamenta nostra quæcunque in Abbotsbury, in dict' com' Dorset', dicto nuper Monasterio, &c. ad eadem plenè & integrè, &c. & in tam amplis modo & forma, &c. Et le dit Giles mozun, & ceo discend a ses Giles Strangwayes son Collines & heire que deuise al def. le dit game de Swannes pur vn an, &c. et pynions quod manus dictæ dominæ Reginæ amoueantur. Sur que Lacurtesy le Roigne demurre in ley.

Et, Fuit resolue, que toutes blanche cignes nient marked, queux sont gaine tout natural liberte, et sont natants in dit riuer a common dreit, poyent este seisie al vse le Roy & son Prerogatiue, pur ceo q̃ volatilia (quæ sunt feræ naturæ) alia sunt regalia, alia sunt aquatilium, alia sunt regalia, alia cõia: come vn cigne est volatile royall, et toutes ceux le prerogatiue de q̃ nest pas comen, appent al Roy & son prerogatiue: et illint Bluene & Sturgeons sont pinions royal, & appent al Roy & son prerogatiue. Et la auoit este nuncient officer le Roy appelle Magist' deductus cignorũ,

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que continue ie lque a ceſt iour. Mes fuit aux̄ reſolus, que le ſubiect poyt auer pꝛopertie in blaunche Cignes nient marked, come alcun poit auer cignes nient marked in ſes pꝛiuate ewes: le pꝛoperty de eux apperteiñ a luy, & nemy al Roy, & ſils eſcapont hoꝛs de ſes pꝛiuate ewes in vn ouert & common riuer, il poit eux ameiner, & eux reprender: Et oue ceo accoꝛd, Bracton lib. 2. cap. 1. fol. 9. Si autem Animalia fera facta fuerint menſueta, & ex conſuetudine eunt & redeunt, volant & revolant (vt ſunt cerui, cigni, pauones, & columbæ, & huiuſmodi) eouſque noſtra intelligantur, quamdiu habuerint animum revertendi. Mes ſils ont gaine lour naturall liberty, & ſont natants in ouert & common riuers, le officer le Roy poit eux ſeiſier in le ouert & common riuer pur le Roy, car vn blaunch cigne ſans tiel purſuit (come eſt auant dit) ne poit eſte comus del auter, & quant le pꝛopertie dun Cigne ne poit eſte comus, ceo eſteant de ſon nature royall volatile, appent al Roy. Et in ceſt caſe le liure in 7. H. 6. 27. fuit vouch, ou Sir John Tiptoft poꝛt act de Treſpas de ſes cignes & toꝛt pꝛiſe: le def. plede q̄ il eſt ſeſ del ſeigniozie de S. deins q̄ ſeigniozie touts ceux q̄ eſtate il ad in le dit ſeigniozie ont ewe de temps dont, &c. touts ſtreyes eſteant deins le dit manour, & nous diomus que les dits cignes fueront eſtrayants al temps in le lieu ou, &c. & nous come ſeigniozſeſomus, & ſeſomus pꝛoclamation in faires & markets, & tantoſt q̄ nous auomus notice que fueſ voſtꝛ cignes, vouz a vouz deliueramus a tiel lieu: Le pl̄ reply, q̄ il fuit ſeſ del maneur de B. ioynant al ſeigniozie de S. & diom̄, q̄ nous & nous anceſtꝛs, & touts ceux, &c. ont ewe ble de temps dont, &c. pur auer cignes natant p̄ my tout le ſeigniozie de S. & diomus que longe temps deuant le pꝛiſel, nous mittomus eins, & ſeſomus notice de eux al def. que fueſ noſtre cignes, & pꝛiomus noſtre damages: & le opinion de Straunge la fuit oze bien appꝛoue per le Court, que le replication fuit bone, car quaunt le pl̄ poit loyalment mitter ſes cignes la, eux ne poyent eſtre ſtrayes, nient pluis que les auers dalcun poient eſte ſtrayes in tiel lieu ou ils doyent auer common, pur ceo que ils ſont la ou le owner ad intereſt de mitter eux, & in quel lieu ils poyent eſte ſance alcun negligence ou laches in le owner. Hoꝛs de q̄ eaſe ceux points fueront obſerue concernant Cignes. ¶ 1. Que cheſcun q̄ ad cignes deins ſon manour, ceſt aſcauoir, deins ſes pꝛiuate ewes ad pꝛopertie in eux, car le bꝛieue de Treſpas fuit de ſes cignes & toꝛt pꝛiſe, &. Quare cignos ſuos, &c. ¶ 2. Que vn poit pꝛeſcribe auer game de cignes deins ſon manour, cybien come warren, ou parke. ¶ 3. Que ceſty q̄ ad tiel game de cignes poit pꝛeſcriber, que ſes cignes natef deins le

manour

manour dun autr. ¶ 4. Que vn cigne poit estre estray: et illint ne poit este aſcun auter volatile, q̄ ceo ay lie in aſcun liure. En 2. R. 3. fo. 15. & 16. le Sr̄ Strange & Sir John Charletou porterent acc̄ ō Trīs vs 3. p̄ ceo q̄ les def. auoient prise et imports 40. cignets des pl̄ in le county de Buck. as dam̄s de x. l. Un des def. plead. q̄ le ewe de Thamise curge p my tout le Roialm̄, & q̄ le dit countie de Buck. est adioinant al Thamise, & q̄ le custodie del dit cōty ō Buck. est, et ad estre de t̄ps dont, &c. q̄ chescun cigne (car cignet in le liure est prise pur vn cigne) q̄ ad son course in aſcū ewe, que ewe curge al Thamise deins m̄ le cōty, q̄ il cigñ viēt & l'tre dascun hōe, & la eyze & ad cignets sur m̄ la terr, q̄ donq̄z cēy q̄ ad le p̄perty ō le cigne aūa 2. de les cignets, & cesty a q̄ le tre est aūa le 3. cignet, le q̄l serra de meins value q̄ lauts 2. Et ceo fuit adiudge bone custome, pur ceo q̄ le possessor del tre suffer eux deyzer la, ou il puit aū eux embraser horz. Et p̄ cest iudgem̄t auxy appiert q̄ hōe poit alledg̃ custum̄ ou p̄scribe in cignes ou cignets. Et in m̄ le cas est dit, q̄ in verity le matr̄ fuit, q̄ le Sr̄ Straūg̃ auoit certein cignes, q̄x fuer cocks, et Sr̄ John Charlet ō certeine cignets q̄ fuer hens, et eux auoiēt cignets int̄ eux, et p̄ ceux cignets les owñ tolud zōt in vn acc̄, car in tiel case p̄ gen̄al custom̄ del Realm̄, q̄ est le cōmon ley in tiel case, les signets appēt al ambideux les owñs in cōmon owelm̄t, s. al owner del cock, & al owñ del hen, & les cignets s̄ra deuide int̄ eux. & le ley de ceo est foundue sur vn reason in natur: car le cock cigne est vn embleme, ou repl̄entation dū effectionate et boier baron a sa feme ouster touts auts volatiles, car le cock cigne t̄rigue luy m̄ a vn femele solem̄t, et a cest cause nature ad conferre sur luy vn done ouster touts auts, et ceo est a mozer cy copeulm̄t, q̄ il chaunta dulcem̄t q̄nt il mozust, sur q̄ le Poet dit,

Dulcia defecta modulatur carmina lingua,
Cantator, cygnus, funeris ipse sui, &c.

et pur t̄ cest cas de cigñ differt de case de tine, ou ant̄ byute beasts: Vide 7. H. 4. 9. Et fuit agree q̄ nul poit aū Swan marke, q̄ Latinè dicit' cigninota, sinō q̄ soit p grāt le roy, ou ō cez officiz a c̄ authorise qu p̄ p̄scripc, & ill ad ley al Swan mark, & ad cignes natāts in ouēs & cōmōrīs loialm̄t mark oue t̄, eux appēt a luy ratione priuileg: Mes nul aūa Swan mark ou game de cignes, sinō q̄ il ad tres et tenūts dellate de franktenem̄t del anuel value de 5. marks, outer touts charg̃, & pain de forfeitur de ses cignes, dont le roy aūa lū moity, & cesty q̄ seisie aūa lautr moity, & c̄ est p̄ lesta, de 22. E. 4. ca. 6 Et cesty q̄ ad tiel Swan mark, poit ceo granter ouster. Et de ceo ieo ay beis vn notable p̄cēdēt in t̄ps H. 6. & est tiel. Notum sit omnibus hominū p̄sentibus & futuris, q̄d ego Iohēs Setward Mil' dedi & con-

concessi Thomæ filio meo primogenit', & hæredib' suꝯ, cigninotā meā armoꝝ meoꝝ, ꝓut in margine laterali pingitur, quæ mihi iure hæreditꝫ discēdebat post mortē Ioh. Steward militis ꝓris mei: habend' sibi et hæred' suis, vnà cum oībus cignis & cigniculis, cum dicta nota baculi nodati signat', sub cōditione, ꝙ quilibet feria ſolis durañ vit' à gula Auguſt. vſq; ad Carniſpriuiū apud domū meā de Darford, vnū cigniculū bene ſignatū mihi aut meis deliberet, qd ſi defecerit, tūc volo, qd' hoc ꝑſēs chirographū caſſetur penitus, & ꝓ nihilo hēatur: in cui' rei te ſtiꝫ ad inſtantiā Matild' vxoris meæ, meū ſigill' ſecretum Chriſti crucifixi ꝑſentibus feci apponi. Hijs teſtibus, Rob. Cl'ico, Ioh. d' Conyers, Alano Fabro, & al'. Dat. apud domū meam manſionalē de Darf. in vigilia S. Dunſt. Epi, an. regni Reg Henrici poſt cōqueſtum Angl' ſexti 14.

et in le margent fuit depict vn petit ragged ſtaffe. Et in ceſt caſe fuit reſolue, q̄ in aſcun de ceux q̄ ſont feræ naturæ, **home ad** ius proprietatis, **vn droit de ꝓpertie, & in aſcun de eux home ad** ius priuilegij **vn droit de ꝓuiledge. Et ſont 3 maū de droits de ꝓpertie, ſ. ꝓpertie abſolute, ꝓperty qualified, et ꝓperty poſſeſſorie: ꝓpertie abſolute home nad in aūꝫ q̄ eſt** feræ naturæ, **mes in ceux q̄ ſõt** domitæ naturæ: **ꝓpertie qualified et poſſeſſorie home poit aū in eux q̄ ſont** feræ naturæ, **et a tiel ꝓperty hõe poit attainer p 2. voies, p induſtrie, ou** ratione impotentiæ, & loci; **p induſtrie come p ꝓſſel de eux, ou p ſelans de eux** manſueta, i. manui aſſueta, **ou** domeſtica, i. domui aſſueta: **mes in ceux q̄ ſont** feræ naturæ, **et per induſtrie ſont fait tame, hõe nad forſq̄s qualified ꝓperty in eux ſ. cy long come eux remaine tame, car ſils attainont a lour naturall liberty, et ſont** animum revertendi, **le ꝓpertie eſt ꝑdue,** ratione impotentiæ & loci: **come hõe ad tame ſhoueles, ou golbankes, ou ſedables, q̄x ſont** feræ naturæ, **et ayꝫont in mon ꝛre, ceo ay poſſeſſorie ꝓperty in eux, car ſi vn ꝓſſel eux quāt ils ne poiēt voler, le owner del ſoile aūa actiõ de Trēſpas** Quare boſc' ſuum fregit, & tres pullos eſ puorum ſuoꝝ, **ou** ardeas ſuas, precij tantū, nuper in eodē boſco nidificant', cepit & aſportauit, **et ouſ ceo accordāt** Regiſter, & Fitz. Nat. Br. 86. b. & 89. b. 10. E. 4. 14. 18. E. 4. 8. 14. H. 8. 1. b. Stamford 25. b. &c. Vide 12. H. 8. 4. & 18. H. 8. 2. **Mes quant home ad beaſts ſauages,** ratione priuilegij, **come per reaſon de parke, garren, &c. il nad aūn ꝓpertie in la beere, ou conies, ou phelants, ou partridges,** et pur ceo **in action,** Quare parcū, warrennā, &c. fregit & intrauit, & 3. damas, lepores, cuniculos, phaſianos, perdices, &c. cepit & aſportauit, ſi ne dicta ſuos, **car il nad ꝓpertie in eux, mes ils append a lity** ratione priuilegij **put ſon game et pleaſure, cy long come ils remainont in le lieu ꝓuiledge, car ſi owner del ꝑke mozuſt, ſon heire nauera eux, et nemy ſes executors ou adminiſtrators, pur ceo q̄ ſans eux le ꝓpe que eſt vn**

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inheritance nest my compleat, ne felonie poit este commit de eux, mes de eux q̄ sont faits tame, in queux home per son industrie ad aſcun pꝛopertie, felonie poit este commit. Et oue ceo accoꝛd̄ le rule del liure in 3. H. 6. 55. b. 8. E. 4. 5. b. 22. H. 6. 59. que est malement reꝑpoꝛt, &c. 43. E. 4. 24. Vide 22. Ass. 12. H. 8. 3. 13. Eliz. Dier 306. 38. E. 3. 10. Vide 2. E. 2. tit'. Distres 2. E. 2. Auowrie 182. Mes home auera ꝓpertie in aſcun choſes q̄ sont de cy base nature q̄ nul felonie poit este commit de eux, et nul home perdꝛa pur eux vie ou member; come de bloodhound & vn mastife moloſſus, 12. H. 8. 3. Vide 18. H. 8. 2. Mes cesty q̄ emblee les egges de cignes hoꝛs del nest, ſra imꝑiſon per vn an & iour, et fine al volunt le Roy, lun moitie al Roy, et lauter al owner del terre ou les egges fuer̄ illint ꝓiſe, & ceo est per le ſtatute de 11. H. 7. cap. 17. Et dauncient temps ad este dit, que cesty que emblee cigne in ouert & cōmō riuer loyalment marked, meſme le cigne (ſi poit este) ou auer̄ cigne, ſer̄ penō in vn meaſon per le beake, & cesty, q̄ emblea luy ſer̄, in recompēce de ceo, chaſe a doner al owner tant de frumēt q̄ poit couerer tout le cigne, per mitter & verſer del frument ſur teſte del cigne, tanq̄ le teſte del cigne ſoit couer oue le frument. Et fuit reſolue, que in le ꝓincipal caſe, le ꝓeſcripc̄ fuit inſufficient, car le effect del dit ꝓſcription est dauer touts. wilde cygnes q̄ sont feræ natura, et nient marke, nidificant', gignent'. & frequentant', deins le dit creeke. Et riel ꝓſcription pur vn warren ſerra inſufficient ꝑ. dauer touts pheſants et partriges nidificants, gignents, et frequentaunts deins ſon manoꝛ. Mes doit dire dan̄ free warren de eux deins ſon manoꝛ, car cōmt q̄ ils sont nidificants, gignents, et frequentants in le manoꝛ, il ne poit auer eux iure priuilegij, mes cy longe come ils sont deins le lieu. Mes fuit reſolue, q̄ ſi les def. auoyent alledge, q̄ deins le dit creke la auoit este de tēps dont &c. vn game de wilde Swannes nient marked, nidificants, et gignents, et vn q̄s dauer ꝓſcribe q̄ iel Abbot & touts ſes ꝓdeceſſoꝛs, &c. auoient vſe de touts temps a aū & ꝓẽder a lour oeps, aſcuns de le dit game de wilde Swannes, et lour cignets, deins le dit creeke, ceo ad este bone, car cōmt q̄ cignes sont royal volatiles, vncoꝛe in tiel maner home poit ꝓſcribe in eux, car ceo poit auer loyal cōmencemt p̄ graunt le Roy, car in Rot. Patent. an. 30. E. 3. pte 2. numero 20. le Roy graunt a C. m. touts fere cignes vnmarked infr̄ Oxfoꝛd & Londꝛes pur 7. ans. : In eodem Rot. aū 16. R. 2. pte 1. numero 39 autiel graunt de fere cignes vnmarked in le Countie de Cambꝛidge al B. Bereſoꝛd chſer: In eod̄ Rot. an'. 1. H. 4. pte 6. numer 14. vn graunt fait a John Fenne, a ſurueyer & cuſtodier touts fere cignes vnmarked, ita quod de proficuo reſpoudeat ad Scacearium,

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per lur appiert, que le Roy poit graunter ſore eignes bonnarked et per conſequens home poit preſcriber in eaz being certeine temps pur ceo q̄ ceo poit aiter loyal commencement. Et home poit preſcriber dauer roy al pillons deing ſon manour, come eſt tenus in 39. E. 3. 55. pur le reaſon auantdit, p̄ uncope ſans p̄ſcript ſig appēt al Roy p̄ ſon p̄rogatiue.

Mich. 39. & 40. Eliz. in Leſche-quer.

Sir Thomas Cecils caſe.

Sir Thomas Cecil eſtant ſeiſie del mannour de Stricklton in le Countie de Nozth. ent in communication oue un Foſter a exchaunger diuers parcels de ceo oue luy, pur certain treſ que le dit Foſter ad in meſme le ville, et deuant aſcun exchaunge p̄fect, Sir Thomas conuey le dit mannour et le dit terre del dit Foſter, per ſpecial noſme del dit Foſter per fait indent et inroſſe, al roign Elizabeth ſes heires et ſucceſſors, et coūenant oue le Roigne, que il fuit ſeiſie eybien del dit mannour, come des dits terres, ia des Foſters dun done eſtate in fee ſimple, &c. et le dit Sir Thomas fuit lie al Roigne in un obligation in 10000. marks a perform ſez le dit coūenant ink marks. Et le dit Sir Thomas auoit, deuant ceſt temps, exhibite un bill in Anglois in leſchequer Chamber, ſō-prenant le matter auātdit, p̄ q̄ les dits treſ, p̄cel del dit mannoz, intend deſte done in exchaunge al Foſter, fuer de greinder valu que le dit terre del dit Foſter. iſſint q̄ le Roigne ne fuit deceiue in l valu, queux terres parcel del mannoz p̄ſſont al Roy per le con-uciance del manoz, p̄ nient meins le coūenant & obligation del dit Sir Tho. quant a ceo fuer infreint, et forfeit per le rigoz del ley.

Mes

Wes le dit Sir Thomas in ſon bil recita ſur leſtatute de 33. H. 8. cap. 39. pur que eſt purueu, That if any perſon, of whom any ſuch debt or dutie, is, or at any time hereafter ſhall be demanded, alledge, plead, declare, or ſhew in any of the ſaid Courts, good, perfect, & ſufficient cauſe and matter in law, reaſon, or good conſcience, in barre or diſcharge of the ſaid debt, or dutie, or why ſuch perſon or perſons ought not to be charged, or chargeable, to, or with the ſame, and the ſame cauſe or matter ſufficiently proue in ſuch one of the ſaid Courts, as he or they ſhalbe impleaded, ſued, vexed, or troubled for the ſame; That then the ſaid Courts, & euery of them, ſhall haue full power, and authoritie, to accept, iudge, and allow the ſame proofe, & wholly and cleerely to acquite and diſcharge all and euery perſon & perſons, that ſhall be ſo pleaded, vexed, ſued, or troubled for the ſame: any thing in this preſent act before mentioned to the contrary notwithſtanding, &c. et que pces ſuit ſue vers luy ſur le dit obligation hors del court del Eſchequer. Sur q̄l act de pliament, & le matter auantdit (eſteant come il ſuppoſe bone, pfect, & ſufficient cauſe & matter in reaſon & bone conſcience deins le dit Act, a diſcharger luy del dit obligation) le dit Sir Thomas p ſon dit bill pria deſtre relieue, & ſur ceo il auoit Cōmiſſion a examiner teſmoignes a p̄uer le matter de ſon bill eſtre voier, q̄ux fuer retorne & publie; Et ſur le view del cauſe in Court in Leſcheqr chamber, appiert per le teſtimonie de dits teſmoignes, que le pl̄ ad fait direct pr̄oofe de touts les parts de ſon bill. Et ore in ceſt term añ 39. & 40. Eliz. diuers q̄ſtions fuer moue touchant ceſt matter. ¶ 1. Et le pr̄incipall fuit, Si le brauncb del act extende a aſcun det mention in le dit act, pur quoy le Roy ad remedie p le common ley, ou in tiels dets, & tiels caſes ſoleint, pur quoy le dit act done remedie al roy q̄l nauoit deuant. ¶ 2. Si le court poit faire diſcharge per decree ſur ceſt bill in Angloys deins lentention del act. Et quant al pr̄imer, eſt aſcauoir, que diuers brauncbes del act ſont deſtre conſider. 1. Lact fait touts obligations al Roy in nature dun ſtatute Staple. 2. Auter brauncb done la ſuit al Roy, comēt que lobligac̄ ad eſtre fait al autr̄ al vſe del Roy. 3. Que le Roy ſur ſuit ſur chelcun obligac̄ fait, ou en apres dēe fait, recouera damages & coſts. 4. Leſtatute done remedie al Roy pur recouir de ſon det ou duty, &c. per Capias, Extend fac', Subpœna, Attachment, & Proclamation de allegeance (ſi beſoigne ſoit) ou autrement come a aſcun des Courts ſerr̄ per lour diſcretions penſe expedite pur le ſpeedy recouir des dets le Roy. 5. Eſt vn claule, q̄ le Roy ſerr̄ p̄ferre in ſon executions, deuant cōmon plons. 6. Le heire q̄ claime p done ſon auncеſtor ſra lie a paier le det le Roy (dae deuant ou aps le done)

per iudgement, recognizance, obligation, ou auter specialtie, et lia le terre auxi al dette le Roy vers lissue in taile: Donques vient le dit prouiso dont le question surde, que commence, Prouided alwayes, and bee it enacted, That if any person, &c. *vt supra.* Et fuit obiect, que ceo extendra solemt in tielx cases in queux remedie est done al Roy per cest statute; Come ou vn bond fuit fait al vse del Roy, ou in charging del issue in taile, ou in charging le heire que claime per done deuant le det accrue, &c. la pur ceo que lestatute done al Roy remedie que il nauoit deuant, cest brauncb done le partie issint charge per cest act, plea a luy discharger, ou per matter de verre in ley, ou in bone conscience. Et ceo fuit fortment inforce per le conclusion de cest prouiso: car le conclusion est (come deuant appiert) any thing in thing act before mentioned to the contrarie notwithstanding; issint que le sence fuit, que le partie poit prender ascun matter in ley ou bone conscience, nient obstant ascun chose conteine deins cest act, que est tant a dire, q̄ cest act ne serra impediment a ceo. Mes in nostre case, le Roy ad remedie per le common ley, & ideo cest prouiso ne aidera luy. Quant a ceo fuit reside, & resolue per le Court, que le dit Sir Tho. Cecill sur le matter auantdit fuit deste relieue p̄ le aide de cest prouiso, car le dit act de 33. H. 8. a done benefit et aduantage al Roy: 1. En feasant chescun bond fait al Roy in nature dun Statute Staple. 2. En donant remedie al Roy mesme pur obligations faits al auters a son oeps. A recouer costs & damages. 4. En suer de execution pur touts ses dets. 5. En charging issue in taile, & le heire que ad le terre de done son auncestor: & pur ceo fuit lentendment del act a gratifier le subiect, que lou nouel prouision fuit fait pur le leuier del debt le Roy in pluys speedy & beneficiall manner que le Roy nauoit deuant, le subiect auxy auera ascun nouel benefit que il nauoit adeuant, et ceo fuit a discharger luy mesme per matter alleage deste discharge in bone conscience. Auxy cest prouiso ne done benefite solement a cesty que ad matter in bone conscience, mes auxy a cesty que ad good, perfect, and sufficient cause and matter in law, reason, (et donques vient) good conscience: et sans question le primer parolx, cestascauoir, cause and matter in law, extendera a touts les dettes le Roy, et proces sur ceo cybien al common ley, come sur cest act: et le conclusion del dit brauncb ne fait encounter ceo, car le sence de ceo fuit, que il pledera matter in ley ou bone conscience, et q̄ riens conteine in le dit act ne serra impediment a ceo. Et issint fuit tenus in semblable case sur autiels parolx in le second saluant de 27. H. 8. ca. 10. De Uses, in Chenies case, ou le

ou ſe prouila ſoue le droit ac. des, ſi le come leur fuit eſte fait: ſi la
ſe cauſe fuit, ſi ſe leſſor fuit oſte ſe terre in vie des auters, in ql caſe
ſi le tenure ne dure vn an eſte fait, le terme fuit eſte merge al common
ley. Mes Trin 27. Eliz. fuit reſolue, que le terme fuit faue, ſi meſme
le poſition fait des poſs come deuant. Mes ceux notable pleas
dients fuer cite, fuy fuer reſolue in Leſchequer per les Barons del
Eſchequer, fur conference eue oue les 2. chiefe Iuſtices, luis in le
caſe de Sir William Herbert in Trin 37. Eliz. que fuit relieue ſur
ſe dit brauncy pel dit act per matter in equitie, pur ceo que il Scire
facias verſ luy come heire a Math. Herbert ſon pier, ſur recog-
nyſance conus al roy Ed. 6. q le dit Mathew, le vicont retorn Scire
fec, ſi fuit ſon default iudgment fuit done, com poies veier in Ma-
thew Herberts caſe in le 9. part de mes Reports. Et pur ceo q in ver-
tie il ne vnq fuit ſummon, ſi ad bone matter, il auoit notice de
ceo de pleder in diſcharge del dit Recognizance, pur ceo que il ad
nul terre q diſcent de ſon pier, ne aſcun heir de luy aps le Recog-
nyſance conus: tout q il monſtr in certaine in vn bill in Engleterre
in Leſchequer chamber: fuir q, ſur conference eue per Sir Roger
Manwood, ſi les auters Barons, oue les 2. chiefe Iuſtices, per decree
il fuit diſcharge del dit Recognizance, ac. Auter caſe fuit cite:
Thomas Duke de Norff. fuit attaint per pliament Ann 38. H.
8. ſi le Roy Ed. 6. vende a Sir Edw. Rous diuers arbres de me-
riſme treſceants ſur les poſſeſſions del dit Duke in Suff. ſi Sir
Edw. fuit lie in vn Obligation al Roy Ed. 6. pur paiment de cer-
taine deniers, a certaine iour pur les dits arbres, ſi deuant le iour
de payment, ſi deuant le dit Sir Ed. ſuccide aſcun des dits ar-
bres, Ed. 6. mozull, ſi al parliament tenus Anno 1. Reginæ Mariæ
fuit declare per parliament, que le dit attainder del dit duke fuit
voide, per que le dit Sir Ed. ne vnques puit enioyer les dits ar-
bres ſolonq ſon bargaine. Et in Scire facias in leſchequer ſur le
dit obligation verſ le heir ſi terre-tenant de Sir Ed. ann 27. Eliz.
ils apperont, ſi pledont tout le dit matter in equitie, in barre ſi
diſcharge del dit Obligac, in vn Latine plea in Leſchequer. Et
ſur bone conſideration del ſtatute de 33. H. 8. per les Barons, ſi del
dit plea, al darraine (aprez que ceo vſt longement depende) fuit
reſolue per les Barons, que les def. fuer eſte relieue deins le dit
act, ſi que les defendants bien poyent pleder ceo in barr. Et ſur
ceo Popham Attorney general, deyant lopinion del Court, vlterius
ꝓſequi non vult. Queux ambideux prelidents ceo monſtr a les
Iuſtices, ſi accordant fuit reſolue per touts les Iuſtices Dengle-
terre (que fuer aſſembles pur doner lour opinion in le dit caſe)
que Sir Thomas Cecil fuit deſte relieue, ſur le dit matter in

equitie, deins le puruiew del dit braunch de 33. H. 8. Et secondement, que le court del Exchequer chamber poit bien fair le dit bill in Anglois, coment q̄ le fait fuit p̄ proces al common ley in le court del Exchequer deuant les barons, faire decree in le case, car a ceo purpose ne sont forsque vn Court. Dongue fuit move, si le prochein puisne prochein enfaunt apres le braunch concernant le equal charging del terr̄ itable al det le Roy in les mains de chescun owner n poffe forr, n q̄ alcun de eux ne serra chasge solement, mes tout̄ entierment, si ceo extende a tout̄ les det̄ le Roy, et a tout̄ executions pur leuier de eux cibi al cómon ley, come fuit le dit act. Et fuit resolue p eux, que le dit braunch extende a tout̄ executions pur dettes le Roy, cibien al common ley, come fuit le dit act, n q̄ tout̄ sert owelnt extend̄ p force de ceſt braunch, solong le puruiew de ceſt act. Fuit auxi resolue, que coſin que le obligation fuit fait pur p̄formance de couenant̄, uncore ap̄s que ceo fuit enfreint (come fuit in le case al barre al temps del enfeasling and deliuerie de ceo) ceo fuit vn dette al Roy per Obligation deins lact.

Trin.

Trin 41. Eliz. in Scaccario.

Le Seignior Anderſons caſe.

Inter le Seignior Anderſon chiefe Juſtice del Court de Common Pleas, et Sidthorpe del Meiteur Temple, vn queſtion fuit moue ſur le braunch del dit act de 33. H. 8. cap. 39. ceſtaſcauoir, That all mannors, lands, &c. which now be, or that hereafter ſhall come, or bee, in, or to the poſſeſſion or ſeiſin of any perſon, to whō the ſame mannors, lands, &c. haue heretofore, or hereafter ſhall diſcend, &c. in fee ſimple, or fee taile, &c. by, or after the deceaſe of any his or their aunceſtor or aunceſtors as heire, or by gift of his aunceſtor, whoſe heire he is, which ſaid aunceſtor or aunceſtors was, is, or ſhal be indebted to the King, or to any other perſon to his vſe, by iudgemēt, recognizance, obligation, or other ſpecialtie; That then, in euery ſuch caſe, the ſame mannors, lands, &c. ſhall be and ſtand by authority of this act from hence forth charged and chargeable, to, and for the payment of the ſame debt. Si tenant in taile del mannor de D. ſoit lie in vn Recognizaunce a J. S. quel Recognizaunce apres deueigne al Roigne per lattainder de J. S. de haut Treaſon, et puis tenant in taile mozuſt, et liſſue in taile alien la terr̄ bona fide, ſi le Roigne poit extender le mannor de D. in les mains del alienee. Et in ceſt caſe 4. points fuer reſolue per les barons, ſur conference eue oue Popham chiefe Juſtice et diuers auters Juſtices. ¶ 1. Fuit reſolue, que deuant le dit ſtatute de 33. H. 8. ſi tenant in taile de terre deueigne in det al Roy per iudgement, Recognizaunce, obligation, ou autrement, et mozuſt, le Roy ne extendra le terre in le ſeiſin del iſſue in taile: car le Roy eſt lie per leſtatut de donis conditionalibus, come eſt adiudge in Plow. Comm̄ in le Seignior Barkleyes caſe 22. in le principal caſe; a oue ceo accord, quant al point in queſtion, reſolution del Court in leſchequer, et del Court de Surueyors in le caſe de Browne pier de Juſtice Browne, cōe

eſt repoꝛt in Plow. Com̃ 249.b. Iſſint vn point bien reſolue, in que fuit varietie deꝫ optiones in nr̃e liureꝫ. Vide 39. Aſſ. pl. 18. 47. E. 3, 8. Regiſtr̃ 143. & 144. Fitzh. Na. Br. 217. a. & b. ¶ 2. Fuit reſolue, Que ſi tenant in taile deueigne in dette al Roigne per receipt deꝫ deniers del Roigne, ou auter chr̃t, ſinon q̃ ſoit p̃ iudgemt, recognizance, obligation, ou auter ſpecialtie, et moꝛuſt, la terre in le ſeiſin de liſſue in taile, p̃ force del dit act de 33. H. 8. ne ſ̃a extende pur tiel det le Roigne, car leſtatute de 33. H. 8. extend̃ ſolement al dits 4. caſes; et touts auters dets remaine al common ley. ¶ 3. Fuit reſolue, Que ſi teñt in taile deueigñ in debt al Roigne p̃ vn deꝫ 4. voieꝫ mention in le dit act, ꝫ moꝛuſt, ꝫ deuãt aſcũ p̃ces, ou extent, le iſſue in taile bona fide alien la terr̃ in taile, q̃ force ceſt ſre ne ſerr̃ extende p̃ force del dit act de 33. H. 8. car come appiert p̃ les poiꝛ del dit braunch, ceo fait la terre in le poſſeſſion ou ſeiſin del hr̃e in taile ſolemt lyable vꝰ le iſſue in taile, ꝫ nemy alienee; Car le effect del puruiew, quant a ceſt purpoſe eſt, That all lands which ſhalbe in the poſſeſſion or ſeiſin of any perſon, to whō the ſame ſhall diſcend in fee taile as heire, whoſe anceſter was indebted to the King, &c. That then, in euery ſuch caſe, the ſame land ſhall be charged with the kings debt: iſſint q̃ p̃ le p̃ſẽte puruiew del act, le terre ſerra ſolemt extend̃, p̃ long cõe ceo eſt in le poſſeſſion ou ſeiſin del heire in taile; car lact dit, That in euery ſuch caſe the land ſhall be charged, ꝫ intant q̃ le terr̃ vꝰ liſſue in taile, ne fuit extendable deuant le dit act, le Roy ad benefit de rẽder ceo in le poſſeſſion del heir̃ in taile, q̃ il ne puit deuant, meꝫ le Roy ne poit extender in leꝫ maineꝫ del alienee, car leſtatute ne extend̃ a ceo; ꝫ le ſeaſorꝫ del act ount reaſon a fauour le purchaſoꝛ, farmoꝛ, &c. del hr̃e in taile, pluis q̃ le heir̃ meſm, car ils ſont ſtrangers al dets del tenant in taile, ꝫ ils bient al terr̃ bona fide, ꝫ ſur bone cõſideration. Iuxy, la eſt auter clauſe, p̃ceine enſuant al dit braunch, le effect de q̃i eſt, And that our Soueraigne Lord, his heires or ſucceſſors, ſhall not be barred, delaied, &c. to demand and receiue their iuſt, &c. debts againſt any of his ſubiects, as heire, or heires, &c. if any ſuch perſon or perſons ſhall ſay or alleage, that they haue no lands, &c. but only intailed or giuen to them by any of their anceſters to whom they bee heires: iſſint que p̃ ceſt clauſe auxy lentent deꝫ ſeaſorꝫ del act appiert, que le heire in taile ſerra ſolement charge oue le dette le Roy. Meꝫ terreꝫ in fee ſimple fueront extendable al common ley, in quecunque maineꝫ que eux deuendroient, et pur ceo quant a eux leſtatute ne fuit forſoꝫ declaratiuũ antiqui iuris; meꝫ quant al eſtateꝫ in taile, ceo fait introductiuum noui iuris verꝫ liſſue in taile, et ceo, in le caſe al barre, fait le diuerſitie deꝫ dits caſes,

coment

ement que ambydeux ſont conioine in vn meſme ſentence. Et Popham chiefe Juſtice dit, que iſſint ad eſte reſolue in Leſchequer, deuant ceſt temps, in le caſe de Sergeant Nichols, pier de Sergeant que ore eſt, que la le terre in les maines del purchaſer del iſſue in taile, ne ſerr̄ extende per le dit act de 33. H.8. pur le det que le pier del iſſue in taile deuoit al Roy (per vn des 4. voyes mencion in lact) mes fuit diſcharge per lopinion del Court del Eſchequer. ¶ 4. Fuit reſolue, que intant que le dit det, in le caſe al barr̄, fuit originalment due al ſubiect, que tiel det neſt pas deins le dit act de 33. H.8. a charg̃ le rre in le poſſeſſion oy ſeiſin del heir̄ in taile: car le dit act, quant a charger terres intailed vers liſſue, extenꝺ ſolement aux dets originalment, & immediatm̄t due al Roy, per iudgem̄t, Recognizaunce, obligation, ou auter ſpecialtie, car les pois ſont (indebted to the King, or any other to his vſe by iudgement, &c.) q̃ eſt intenꝺ deſte immediate det, et nemy aux dets queux fuer̄ due aux ſubiects, et appytaine ou accrue al Roy p reaſon de attaindre, vtlagarie, forfeir̄, done del ptie, ou per aſcun auter collaterall voy ou meane, pur queux le ſtatute de 33. H.8. ad vn clauſe, petit deuant le dit brauche, pur le briefe & general manner & forme de pleading, in tiels caſes, (pur recouerie de eux in les Courts mention in le dit act) del pt le Roy, s̃. That the party ſuch a yere & day did giue the ſame det to the King, or was attainted, outlawed, or other offence, forfeiture, deed, act, or thing committed or done, by reaſon wherof the ſaid debts did accrue & ought to remaine, come, and be to the King. Iſſint q̃ le ſeueral manſ̃ del penninges de ceux 2. brauncheſ manifeſt lentention des feaſors del act, a preferrer immediate dets due al Roy per iudgement, &c. deuant dets del ſubiects, queux accrue al Roy per aſſignem̄t, attaindre, vtlagar̄, &c. et le reaſon fuit, pur ceo q̃ dets due immediatm̄t al Roy per iudgement, recognizance, obligation, ou auter ſpecialty, ſont in lour nature pluis haut. et poient eſte mieulx conus, et ſur ſearch troue, q̃ dets due aux ſubiects. Auxy quant J. N. eſt indet al J. S. p iudgem̄t Recognizance, obligation, ou auter ſpecialtie: & puis J. S. eſt vtlage, &c. p q̃ le det deueigne al Roy per lutlagarie, &c. in ceſt caſe ne poit eſte ꝓpũnt dit, q̃ J. N. eſt indet al Roy p iudgem̄t, Recognizance, obligation, ou aut̄ ſpecialtie: car p ceux il fuit indet a J. S. & J. S. per ſon vtlagar̄) que eſt le title le Roy) ad forfeit eux al Roy; iſſint que per force del iudgement, &c. et vtlagar̄ le det appertaine al Roy. Et les paroſ̃ del act ſont (indebted to the K. or any other to his vſe by iudgement, &c.) iſſint que le det, ou couient eſte immediatm̄t al Roy meſm̄ ou, ſi ſoit a aſcun auter q̃ al Roy, ceo couient eſte originalm̄t al oeps le Roy: et

et ceo nest my quant le det est originalment due al ſubiect a son oepes demeſne, & puis forfeit al Roy per act ſubſequent. Et iſſint fuit reſolue, que pur tiel det le Roign̄ ne extendra on vers lalienee del heire in taile, ou vers le heire in taile meſme : car tiels debts ne ſont deins le dit act de 33. H. 8. quant a charger le heir in taile, et iſſint remaine al common ley come debts immediatment due al Roy, que ne ſont due ne per iudgement, recognisance, obligation, ne auter ſpecialtie, come ad eſtre dit deuant.

Trin

Trin. 42. Eliz. in Communi Banco.

Buts caſe.

EN Repl' int' Fiſhe & But, le caſe in effect fuit. Un Iſſill ó Black acre in fee, & auxi poſſeſſe de white acre pur ans, p ſon fait grant rent hoꝛs de ambideux a vn A. a auer & perceiu a luy pur terme de ſon vie, oue clauſe de diſtreſs in ambideux, & pur rent arere A. diſtreine & nouve in white acre, &, ſi le diſtreſſe fuit bien pꝛiſe ou nemy, fuit le queſtion. Et fuit agree per totam Curiam, que le diſtreſs fuit bien pꝛiſe. Et in ceſt caſe ceux points fueront reſolue. ¶ 1. Que ſi leſſee pur ans dun carue de terre, grant a vn auter vn rent hoꝛs del dit carue pur le vie del grauntee, que ceo eſt bone charge durant le terme, ſi le grauntee viue cy longement: car le graunt ſerra pꝛiſe pluis ſoꝛt vers le grauntoꝛ, & ne ſerra void quant per aſcun conſtruction ceo poit eſtre fait bone (Vide Plow. Comment' in Welchdens caſe) & in tiel caſe le grauntee nad que chattel. Iſſint, ſi le leſſee pur ans graunt la carue del terre al auter pur terme de ſon vie, ſi ad lentier terme, ſi viuet cy longement, cibyen come in le caſe del deuiſe. ¶ 2. Fuit reſolue, que quant rent eſt graunt hoꝛs de terre in fee, et hoꝛs dun terme pur ans, a auer et perceiuer al grauntee pur terme de ſon vie, que ceo, come eſtate de franktenement ſolonque le purpoꝛt del fait, ne poit iſſuer hoꝛs del terme pur ans, meſ hoꝛs del terre que le grauntoꝛ ad in fee ſimple tantolement, pur ceo que le franktenement del rent poit iſſuer hoꝛs de ceo, & nemy hoꝛs del chattel. Et vn entire rent ne poyt eſtre franktenement hoꝛs de Blacke acre, & chattel hoꝛs de White acre, & a faire 2. rents quant lun ſolement eſt graunt per vn al auter, ſerra in ceſt caſe iniurious, et le pact et mutuall

agrement

agreement des parties, ne poient charger tiel chose ove rent, que nest pas chargeable per la ley, come hors de hundred ou advowson 30. Lib. Assisarum pla. 5. hors dun fairе, 14. Edw. 3. tit. Seire facias 122. le Countee de Kent case, ou rent poit estre graunt ou reserve dascun estate de franktenement hors dascun auter hereditament que nest pas manourable, ou in possession, reuertion, ou per possibilitie, mes est hæreditamentum incorporeum; car pacta priuata non derogant iuri communi: & in Assise ils ne poient este mise in vieu, ne ascun distres poit estre prise in eux. Mes, in le case al barre, white acre est hæreditamentum corporeum & manourable, mes pur le exilitie & incapacitie del interest, que le grantor ad in ceo, cest rent de franktenement ne poit issuer hors de ceo, mes issera solement hors del terre in fee simple. Et in le case al barre, in assise port de cest rent, le terre in fee serra solement mise in vieu, & si le grauntee accept lease ou graunt de white acre, ceo ne suspendra son rent. ¶. 3. Fuit resolue, que white acre serra, durant le terme, subiect al distresse del grauntee pur le rent, durant les ans, coment que le rent ne issuer hors de ceo, come in 46. Edw. 3. 14. quant terre est charge ove rent in fee, biens & chateux poient estre oblige al distres. Et fuit dit, que, intant que white acre est solement charge ove distres, si le grauntee prist leas dascun part de ceo, ceo nest ascun suspension del distresse, mes que il poit distrainer in le residue; car ceo nest issuant hors del terre, mes deste prise sur le terre: come si ceo ay garren in auter terre, & prise lease del parcel del terre, coment que le terre soit charge ove le garren, uncore, intaunt que ceo ne issuist hors del terre, ceo nest ascun suspension. Vide 35. Hen. 8. 56. 14. Hen. 4. 6. &c. car home poit auer garren in son terre demesne: issint il poit in multes cases distreine in son possession demesne, come in 31. Eliz' tit' Distresse 64. & 7. H. 6. 3. per Curiam, un tenant in common distreinera les beasts del auter in la terre que ils ount in common; & 26. Hen. 8. fol. 5. il poit prescribe a distreiner in son terre demesne, mes nemy dauer rent hors de son terre demesne. Si home per fait grant rent de 40. s. a un auter hors de son manor de Dale, a auer & percciuer a luy & ses heires, & graunt ouster per mesme le fait, que si le rent soit arere, que le grauntee distrainera in le manour de Dale (soit le mannor de D. in mesme le Countie ou in auter. & soit ceo graunt p un fait ou diuers faits) le rent est solement issuant hors del mannor de D. & nest que paine, que si distreinera in le manour de D. mes ambideux les mannors sont charge, lun ove le rent, & lauter ove distres pur le rent, lun issuant hors del terre, & lauter deste prise sur le terre;

Et

Et ſi ieo graunt a vous, que vous et voſtre heires diſtreinera pur vn rent de 40 S. deins mon mannor de D. ceo per conſtruction in ley amountera a vn graunt dun rent hors de mon mannor de D. car ſi ceo ne amountera a vn graunt dun rent, le graunt ſerra de petit force ou effect, ſi le grauntee nauera force ſque vn nude diſtres, et nul rent in luy: car donques ſi ne vnques aueroit Aſſiſe de ceo, &c. & ceo eſt le reaſon, que eſt ſouent foits rule et reſolue, que ceo amount a vn graunt dun rent, per conſtruction del ley, vt res magis valeat, 3. E. 3. 12. 3. Lib. Aſſ. pla. 7. 14. Aſſ. pla. 14. 16. E. 3. tit. Graunts 64. 18. E. 3. 32. 26. Aſſ. 38. 30. Aſſ. 12. 46. E. 3. 18. 32. 8. H. 4. 19. 9. H. 6. 9. 22. H. 6. 11. Litt' 48. b. Et in tiel caſe le grauntee nauera briefe de Annuitie. Mes quant vn graunt rent hors del mannour de D. et graunt outter, que ſi le rent ſoit arere, le grauntee diſtreinera pur meſme le rent in le mannour de D. ceo eſt force ſque penaltie in le mannour de D. pur 3. cauſes. 2. Le ley ne beſoigne a faire conſtruction, que ceo amountera a vn graunt dun rent, car icy vn rent eſt expreſſement graunt deſte iſſuant hors del mannor de D. & les parties auoient expreſſement limitte hors de quel terre le rent iſſuera, et in que le diſtres ſerra priſe, & le ley ne ſerra expoſition encounter lexpreſſe parols & entention des parties, quant ceo poit eſtoier oue le rule del ley; Quoties in verbis nulla eſt ambiguitas, ibi nulla expoſito contra verba expreſſa fienda eſt. 2. Si in ceſt caſe ceo amountera a vn graunt de Rent hors del mannour de D. donques le grauntour ſerra deux foits charge; car ſi le grauntee poit briefe Dannuitie, ceo entendra ſolement al mannour de D. car ſur le graunt de diſtreſſe in le mannour de D. nul briefe Dannuitie giſt, pur ceo que le mannour de D. eſt ſolement charge, et nemie le perſon del grauntour, quaunt a ceo, et a ceſt cauſe le porter dell briefe Dannuitie ne poit diſcharge le mannour de D. daſcun rent: et iſſint le ley, per conſtruction encounter les parols et lentention des parties, ſerra iniurie al grauntour a charger luy 2. foits. 3. Si in tiel caſe le mannour de D. in que le diſtres eſt ſolement limitte, ſerra in auter Countie, donques ad eſtre ſouent foits adiudge, que le rent ne iſſuer hors de ceo, mes le diſtreſſe ſerroit come vn meane & remedie a coarcter le tenant del terre a paier le rent. Et fuit dit, que ne fuit aſcun diuerſitie in reaſon, que le ley in conſtruction ſerra le rent deſtre iſſuant hors de ceo, quant il giſt in meſme le countie, et nemy quaunt il giſt in ſeueral Counties; car les parols in ambideux caſes ſont tout vn, et neſt aſcun reaſon a dire, que il fayera de

reco-

recouerie p̄ aſſiſe. Vide ſupra in Bulwers caſe; & les liures in 1. lib. Aſſ. pla. 10. & 1. Ed. 3. 21. & auters liures ne dient, que le rent iſſuiſt in tiel caſe hors de ambideux, mes que le terre in que le diſtres ſerra p̄iſe eſt charge. & ceo eſt voier, car eſt charge al diſtreſſe: et intant que ceo fuit charge al diſtres, lour opinion fuit, que les tenants de ambideux ſerra noſme in laſſiſe. Vide les liures in 9. E. 3. 13. 31. Aſſ. 27. 17. E. 4. 6. 10. Aſſ. 4. 10. E. 3. 18. 2. E. 2. Aſſiſe 360. 1. Aſſ. 10. 3. Aſſ. 7. 32. H. 6. 27. 22. Aſſ. 66. 31. Aſſ. pl. 27. 29. E. 3. Aſſ. 366 Et lopinion de Finchden in 41. Ed. 3. 15. fuit affirme pur bone ley, que ſi le mannor de D. hors de que le rent eſt graunt, ſoit recouer per eigne title, que tout le rent eſt extinct, mes ſi le mannor de S. in que le diſtreſſe eſt limit, ſoit euict, vncore tout le rent remaine. Iſſint ſi le graunter purchaſe ceel del mannor de S. le rent neſt pas extinct; pur ceo que le rent iſſuiſt ſolement hors de mannor de D. Vide 17. E. 4. 6. ſemblable caſe. Et fuit dit, que ſi home graunt rent hors del 3. acres, et graunt ouſter, que ſi le rent ſoit arere, que il diſtreinera pur le rent in ſun des acres, ceſt rent eſt intier, et ne poit eſtre rent ſecke hors de 2. acres, et rent charge hors del 3. acres? et pur ceo eſt rent ſecke pur tout, et vncore il diſtreinera pur ceo in le 3. acres. Iſſint ſi rent ſoit grant a 2. & a lour heires, hors dun acre de terre, & que bien liſt a lun de eux et ſes heires a diſtreiner in meſme lacre pur ceo: ceo eſt rent ſecke: car intant que ils eſtoient ioyntment ſeiſie dun entier rent, ne poit eſke quant a vn rent ſecke, & quant a auter rent charge, et ceſt diſtres eſt come appurtenant al rent: et pur ceo ſi celuy que ad le rent mozuſt, le ſuruinor deſtreinera, et ſi ambideux graunt ouſter le rent al vn, il diſtreinera pur ceo. Mes ſi home graunt rent hors de blacke acre a vn et a ſes heires, et graunt a luy que il poit diſtreine pur ceo in meſme lacre pur terme de ſon vie, ceo eſt vn rent charge pur ſon vie, & rent ſecke apres, diuerſis temporibus. Autrement eſt ſi le diſtreſſe ſoit limit pur certaine ans in meſme la terre, la ceo remaine rent ſecke entiremet, pur ceo que le fee et franktenement eſt ſecke in tiel caſe. Mes fuit adiudge in le caſe al barre, que lauowrie fuit inſufficient pur diuers cauſes. ¶ 1. Pur ceo que in lauowrie il ne fuit mention de ſeiſin terre hors del terre in q̄l nad hors que leaſe pur ans, ſ. quod conceſſit extra terram illam inter alia quendam reddit', &c. ou in ſon auowrie il diſt auer deriue le rent hors del terre in fee ſimple ſolement, car hors de ceo in iudgemt del ley le rent pur vie fuit iſſuant. Et coment que le plaintife, in barre al auowrie ad diſclole tout le veritie del matter in ſpecial, que in iudgement del ley fait pur lauowant, et ad fait ſon caſe

melior

melioꝛ pur luy que lauowant ad fait pur luy meſme, vncoꝛe ceo ne fait lauowꝛie, que fault ſubſtance bone, car lauowꝛie que eſt in le nature dun count doit conteiñ ſufficient matt ſur que il poit auer iudgement dauer retorne. Mes ſi lauowꝛie ou aſcun count ou replication, &c. fault ſoꝛm ou aſcun circumſtance de tempꝛ, lieu &c. la le plea de lauter partie per ſon plea poit ſaluer tiels imperfections, mes ne poit ſuplier defect del matter de ſubſtance. Vide 6. E. 4. 2. b. 6. H. 7. 10. 18. Ed. 4. 16. b. 18. E. 3. 37. Pl. Com. Barkleyes caſe 230. 38. El. 6. 17. 18. & 19. 22. E. 4. 2. 5 H. 7. 13. 7. H. 7. 6. b. &c.

¶ 2. Le auowant, plead le graunt hoꝛꝛ del term pur ans ſolemñ, & conclud, virtute cuius il fuit ſeiſie in dominico ſuo vt de libero tenemento pro termino vitæ ſuæ, que eſt repugnant dañ franktenemét hoꝛs dun terme pur ans, Et iſſint iudgement fuit done vers lauowant pur inſufficient pleading.

Cases de Quare impedit.

Paschæ 31. Elizab. rott. 141.

IOhn Hall port Quare impedit vers leuesq; de Bath & Wells, et Thomas Maughton Clerk del. pur disturber luy de presenter al vicak del Wollauington, appendant al Mannor del Wollauington, dõc le deane del Windlor fuit seisie in son demesne come del fee, in droit de son deanrie, & presenk Rob. Pitman son clerke, q̃ fuit institute & induct, & conuey cest Manor al Countee de Leicester per leale pur ans, q̃l assigne tout son interest al George Sidenham Chiualer, que graunt ceo al Christopher Rol, et duk son possession le vicak deuient voide per le mort del Robert Pitman, et le dit Christopher Rol present vn John Mauies son clerke al dit vicarage, que fuit admit, &c. et apres le dit Christopher Rol graunt son interest in le dit lease al pl̃, et puis le vicak deuient voide per deprivation del dit John Mauies, q̃ que il appent al pl̃ ỹ presenk, et les defendants luy disturbe, al ses damages, &c. A q̃ leuesque pleade, q̃ il claime riens forsq; cõe ordinarie, & demaund iudgement si sans special disturbance. Et Thomas Maunton dit, que il claime riens in lauowson del vicak, mes q̃ il est vicak ỹl dit esglise, del presentation del dit George Sidenham, que vncore est in vie, nemy nosme in le brieke, et demaund iudgement del brieke. Le plaintife al plea del euesque prist iudgement, entant q̃ il claime riens in le vicak, et fuit graunt, mes cesset executio tanq; &c. Et quant al plea del Thomas Maunton il demurre in ley. Et le sole question del case est, si le Quare impedit gist vers leuesq; et incumbent, sans nosmer del patron. Et fuit resolue, que le brc abatek, et q̃ le patron doit estre nosme in le brc, et ceo p̃ deux causes primerment pur ceo que le patronage serk in cest case recouer ỹs

cestuy

ceſtuy q̄ ad riens in le patronage: et neſt reason, q̄ ceſtuy q̄ ē patrō
ꝑ dil poſſeſſe & ouſte de ſon patronage, q̄n il ꝑ ſtraung & nient p-
tie al bꝛe, & noſme eſm̄ in ceſt caz q̄nt il poit eſtr̄ laſt ptie al bꝛ, 2. Al
common ley, le encumbent ne pleadeꝛ aſcun plea q̄ touche le droit
del patronage, & pur ceo ſerr̄ inconu̅ reaſon, q̄ il ꝑ ſoleñt noſme
in le bꝛe q̄ al common ley ne poit defend le patronage, et ceſtuy q̄
ad le patronage, et que poit pleader ni droit de ceo omit in le bꝛe.
Car al common ley, chescun pleader plea q̄ eſt apt pur luy, et pti-
nent a ſon caſe, come in Aſſiſe ꝺ diſſeiſor & teñt, &c. le teñt pleadr̄
plea que touche me le tenancie et nemy le diſſeiſin, et le encumbent al
common ley ne pleadra al droit de patronage in q̄ il nad riēz, mez
a ceo le patron pleadra: et le miſchiefe ſuit, q̄ p le feint pleading
ou confeſſion del patron in Quare impedit, le encumbent ſuit ſaunz
remedie, cõe le liur̄ ē adiudge in 18. E. 3. 23. q̄ ſuit deuāt l'eſtaꝯ ꝺ 25
E. 3. Vide 22. H. 6. 28. 9. H. 6. 30. 31. &c. mez le eſtaꝯ ꝺ 25. Ed. 3. ca. 7.
enable le poſſeſſor, &c. (q̄ eſt tāt ꝺ dire cõe le encumbent, aꝑs induction
cõe eſt ten⁹ in 4. H. 8. fo. 1. Dier) & counꝛ pleaꝺ le title ptiſe ꝑ le roy
et dauñ ſon priēz, & ouſte & defend ſon dꝛ ſur la matr̄, tout ſoit que
il claime riens in le patronage, et p equitie il pleaders verꝫ touts
cõmon ꝓfons, cõe l'eſ liur̄ſ ſont in 9. H. 6. 30. 31. &c. 22. H. 6. 28. 13.
H. 8. 13. 14. H. 8. 29. Vide 30. E. 3. 30. 27. E. 3. 81. 46. E. 3. 13. 19. 47.
E. 3. fol. 111. 2. R. 2. Incumbent 4. 8. H. 5. 9. 7. H. 4. 34. 13. H. 4. 7. 22.
H. 6. 26. 16. E. 4. 11. 2. H. 7. 14. 10. H. 4. Scatham. Et ē deſire obſerue,
q̄ touts foits, q̄nt incumbent pleaꝺ in barr̄, il prīmerm̄ dit, que il
eſt perſona imperſonata eccleſiæ prædict' &c. p q̄ eſt imply, q̄ il eſt ad-
mit, inſtitute, et abl̄ de pleaꝺ in barr̄. ſ. ꝺ ſ le roy, q̄ il ē admit, in-
ſtitute, et induct, & verꝫ cõmõ ꝓfon, q̄ il eſt admit & inſtitut. car dõ
q̄ eſt eccleſia plena & conſulta verꝫ un cõmõ ꝓfõ, cõe ē ten' in 9. H.
6. 31. 22. H. 6. 27. 21. E. 4. 34. b. 24. E. 3. 30. 25. b. 3. 47. 38. E. 3. 9. a. 44
E. 3. 3. &c. Mes cē diſſũt in le caſe al barr̄ fuit ptiſe & agree, q̄ q̄nt
p le iudgemẽt in le Quar̄ imp̄ le inheritaunce, eſtat, ou intereſt del pa-
trõ in le patronage ē bꝛe deueſt p le iudgemẽt in Quare imp̄ poꝛt p
J. S. la J. N. q̄ p̄ſent (& ſon clerk reſceiue) couēt le noſm̄ in l'bꝛ
mes q̄nt l'enheritance, eſtate, ou intereſt del patron ne ſerr̄ deueſt
per le iudgemẽt, dont ꝑs, ſi aūt diſturber ſoit noſme in le bꝛe, ne be-
ſoigne a noſmer le droiturel patron in le bꝛe, et oue cē diſſũtie ac-
coꝛdant noſtre liures: car in 42. E. 3. fol. 7. a. un poꝛt Quar̄ impedit
vers auter, le defendant dit, que il ne claime riens in le patro-
nage, mes dit, que leveſq̄ luy p̄ſent per laps, iudgemẽt ſi tout, &c.
& la Belknap ꝓfra briefe al eueſque, pur ceo que il auer diſclaime
in le patronage, et le Court ne voille pas graunter ceo, pur ceo
que intant que neq̄ le patron, neq̄ leveſq̄ q̄ in meſme le caſe ſuit

in lieu de patron ne lueront nosm̃ in le brieue, fuit adiudge, que le brieue abatera, et si tiel brieue serra maintenable, chescun patron per coutin inf estraung̃ lencumbent poit estre oustie de son aduowson: et otie ceo accordont 9.H.6.30.31.&c.3.H.4.2.& 3.13.H.8. 13. Mes in 7.H.4.25.37. la in Quare impedit, p̃ reo que le presentatiõ fuit solement recouer̃ ne laduowson, ne le patrõ mise hors̃ de possession, le brieue fuit adiudge bone saung̃ nosmer del patron. Si Quare impedit soit port vers̃ le patron et incumbent, & le patron morust pendant le brieue, le mort del patron nabatera le bre, come est adiudge in 9.H.6.31. car la sont deux mischiefs; vn si brieue abatera le disturbance serra dispunie, & coment que le brieue fuit bien commence, vncore le plaintife serra saung̃ remedie, car fault disturber: et del auter part lauter mischiefe est, si le brieue nabatera mes̃ le plaintife proceder̃ al iudgement et execution, le verie patron serra hors̃ de possession: et entãt que in lun cas, si le droiturel patron serra mise hors̃ de possession, il ad remedie per brieue de Droit, a recontinuer laduowson, et in lauter cas si le bre abatera le plaintife serra saung̃ remedie, quel serra le greinder mischiefe, et a cest cause le brieue estoiera, et ne serra abate: et oue ceo accordont 7.H.4.26.b.13.H.8.13.9.H.6.57. Et Quare impedit bie commence per diuers̃, come coparceners̃ ou ioyntenants̃, &c. ne abatera per le mort del vn de eux, ne Quare impedit port per baron & feme nabatera per mort la feme, pur ceo que auterment le plaintife, si les 6. moys̃ sont passe, serra saung̃ remedie, come les liuks̃ sont in F.N.B.35.b. 38.E.43.37. 9.H.6.11.7.H.4.19. 14. H.4.12.9.H.9.30.57.1.H.5.13.17.Ed.3.11.7.Ed.3.304. Mes si le Roy present, et son clerke est admit et institute, &c. la le Quar impedit port estre port pur necessitie vers̃ leuesque ou lencumbent, car ne gist vers̃ le Roy, issint del pape si bie vsurpe, 12.H.8.12. 4. H.7.15.&c. Vide 47.E.3.fo.11. Le roy port Quar impedit vs̃ walter Walwtre deseglise de Wetfield, et fist son title, entant que Hammond eueskz de Rochester ad psent al dit esgl̃ p vsurpatiõ estoant void laduowson de q̃ de bre appent al 3. filles et hres̃ son clerke q̃ fuit admit, institute, et induct, & puis̃ lencumbent resigne, et le successor psent aust, q̃ fuit admit, institute, et induct, et si morust, p q̃ appent al Roy a plent, intant q̃ leueskz ad graine cest aduowson a luy & ses̃ succ̃ saung̃ conge, p que lauowson fuit deuenus in mortmaine: le def. plead, q̃ il est parson del psentm̃t de William Wycleseys predecessor leueskz que ore est, Thomas per nosme, issint q̃ le patronage est in Thomas, le quel, nous intendõs, couient estre nosme in le brieue, p que nentendomus̃ my, q̃ ake seigniour le roy a cest brieue, in quel patron nest my nosme, voille estre respond, car

nous

nous intendomus, que Quare impedit ne gist my deuers lencumbentsole,sans nosmer le patron,ou est expressement monstre,que la est patron que poit pleader en barre del pl. ou auter chose, de ouster le Roy del action,que ne gist en le conuzans del incumbent a pleader: et fuit adiudge,que le brieke le Roy fuit bone vers lencumbent sole,pur ceo que il poit doner, per lestatute,quel respons il voit sole,in maintenance de son possession de son esglise, et le ore euesque,que è succesor nest pas disturber,car le defendãt vient eins p le predecesor, e put ceo ne serr charge oue damages ou costs. Et puis le plaintife John Hall perceiuant, in le principal case,le resolution del Court discontinue son suit, et pde son presentation illa vice.

Cases de Quare impedit.

Paschæ 40. Elizabeth.

Sir Hugh Portmans case.

IN Quare impedit, per Sir Hugh Portman ds Larcheuesq de Cãterbuk et Mountgomerie Clerke, ad Eccleſiam de Chelſey, in comitat' Somerſet, et fiſt ſon title per reaſon dun grãt dun prochein auoidance vnica vice, diuers points fuerõt reſolue. ¶ 1. Si le plaintife en Quare impedit ſoit nonſue apres appearance, ceo eſt peremptorie, et bone barre in auter Quare impedit, coment q̃ ſoit pozt deins 6. moys; et le reaſon de ceo eſt, pur ceo que le defendant ſur title fait (per que il deueigne actor) auera briefe al eueſq de admitter, &c. ſon clerke in meſme leſgliſe, &c. que eſt bone barre in auter Quare impedit, et oue ceo accord, 19. E. 4. 9. 22. H. 6. 44. 45. 33. H. 6. fol. 1. 55. 20. E. 4. 14. 21. Ed. 4. 2. b. &c. F. N. B. 38. b. Meſme la ley, ſi le plaintife in Quare impedit diſcontinue ſon ſuit le defendant ſur title fait auera briefe al eueſque, et p conſequence ceo eſt peremptorie: et oue ceo accord, 31. H. 6. 15. Mes ſi le briefe de Quare impedit deins les 6. moys abate pur faux latine, ou inſufficiencie del forme, ceo eſt le default del clerke, et ne ſert perẽptorie al plaintife, ne le defendant ſur ceo auera briefe al Eueſque, mes le plaintife poit auer nouel briefe de Quare impedit, et oue ceo accord 3. H. 6. 3. 31. H. 6. 15. F. N. B. 38. b. Vide 34. Aſſ. pl. 9. ſẽblable. Iſſint ſi le briefe abate per le miſnoſmer del plaintife ou def. ſi le pl confeſſe ceo, le defendãt nauera bre al eueſq, car i poit eſtre le default del clerke in eſcrier de ceo: et oue ceo accord F. N. B. 38. Vide 31. H. 6. 15. Mes ſi le pl ſoit fait chiualer pend le bre l bre abatera, et le defendant auera bre al eueſque, et p conſequẽt ceo eſt peremptorie, car (come nous veiomus p common experience en ceux iours) ceo eſt lact del pl, et nul eſt compel ou cobezt a ceo.

Triñ

Trinita. 27. Elizab. rott. 320.

Baskeruiles case.

EN Quare impedit in Communi banco le case fuit, que an. prim' Mar̃, title a ꝑsent̃ per laps fuit deuolue al Roigne al esglise de Cusep in le coũtie de Heref. Sir Nicolas Arnold le ꝑatron ꝑsent vn Euans, que a ceo fuit admit, institute, et induct, et mozust, et si le Roign̄ ad pard son titl̃ a ꝑsent̃ per lapz ou nemy fuit le question. Et fuit adiudge, que le Roigne ad pard ceo, car le Roigne nad que vnam & vnicam præsentionem hac vice, que ne poit estre extend al 2. auoidance: car negligence a ꝑsent̃ perdẽ le subiect vn ꝑsentment solemñt ꝑ lapz, & nemy diuers: et si le Roigne ad primã & proximam aduocationẽ grant a luy, el ne poit ꝑnd̃ le 2. Et auterment graund inconuenience ensuek al ꝑatron, car le Roigne poit abstener de ꝑsenter, et diuers permitt̃ a ꝑsent̃, per vsurpac̃ lun aps auk, et ꝑnder son tourne qñt el vodt, et le patron poyt estre in manner per ceo disherite. Et le statute de prærogat' Regis, quod nullum tempus occurrit regi, est destre intende, qñt le Roy ad estate ou interest certaine et permanent, et nemy qñt son interest est spectalment limitte, quaunt, et coment il ne ꝑndza, et nemy auterm̃t; car la temps est le substance de son title, et in tiel caz de tẽps, occurrit regi. Et issint fuit auterfoits adiudge Pasc. 28. E. Rott' 412. in Communi banco, int̃ Beuerly pl̃, & Iarcheuesq̃ d̃ Cãterburie, et Gabziel Cozwal def. pur lesglise de Somby, in com. Lincolne.

Hill'

Hillar. 43. Elizab. in Communi *Banco, rott.* 1108

Maunds. case.

IN Repleuin inter Maunde et Gregorie le detendant mꝛe, que vn Rent charge, hors dun mease et certaine fres, fuit graunt per fait a vn ꝫ a ses assignes, pur son vie, pro consilio impendendo, payable annuelmt al 4. feasts, et pur default de paimt. il soit demaund, q̄ serra loyal al grauntee et ses assignes a distreiner, le grantee assigne le rent al auowant, le tenit atrorne, lassignee sur le fre demaund le rent puis le iour, et pur default de paiment distraine ꝫ auowe, ſi q̄ le pl̄ demurr̄ in ley. In cē case fuit resolue. ¶ 1. Que rent grant a vn ꝫ a ses assignes, pro consilio impendendo, poit estr assigne ouster ꝯ lexps parolx del grauntor, que graunt ceo a luy ꝫ ses assignes; car modus & conuentio vincunt legē. ¶ 2. Que in cest case ne besoigne pur lassignee a deuaunder le rent al iour come il doit in case de reentrie; car la tout lenterest ou estate serra defeat ou q̄it aleun summe nomine pœnæ serr̄ forf. in ambideux ceux cases demaund couient estr̄ fait precisement al iour, vn conuenient temps deuāt le coucher del soliel, in lun case in respect dl condic̄, et in lauk in respect del penaltie. Mes in case de distresse, cestuy que ad le rent poit demaund ceo a q̄l tēps q̄ il voit, car nul yde ou penaltie sur ceo insuera, mes soleīt remedie a bener a son rent q̄ est arere, et q̄ ē due a luy: et illint fuit adiudge in Communi banco, Mich. 40, & 41. Eliz. inter Stanley ꝫ Read, ou le case fuit, q̄ vn rent charge fuit graunt, payable a certaine iour, ꝫ si ceo soit arere ꝫ demaunde q̄ bñ lirroit al grauntee a distreiner; lauowant monstre, comt q̄ il fist demaunde al iour, le pl̄ trauers, que il ne fist demaund a m̄ le iour (entendant a faire le iour parcel del issue) sur q̄ le def. demurre en ley, et fuit adiudge eucounter le pl̄; car si le demaund fuit in aleun temps puꝛ le iour et deuāt le distresse, suffit. ¶ 3. Fuit resolue, que si home q̄ ad rent seck, payable annuelmēt

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al feaſt de Paſche, ad vn foits ſeiſin del rent, et le feaſt de Paſche paſſe, & nul tend ou dõ fait del rent, il poit conſit q̃ ſoit ayꝑ le iour de payñt, beign al tre, & la dõe le rent, et, conſit q̃ tenũt del terre ne ſoit la, vnc̃, ſur tiel demaund ſi nul ſoit pꝛiſt & payer le rent, c̃ eſt denier in ley, ſur q̃ ceſtuy q̃ ad le rent auer̃ Aſſiſe, intãt q̃ nul penalty ſur ceo inſuera, mes ſolemt dañ remedie de recouer ſon rent et les arrerages ouo damages & coſts, & oue c̃ accoꝛd Litt' fo. 51, & liure Dentries fol. 79, b. 29. Aſſ. p. 52. Mes in meſm le caſe, ſi le tenũt ſoit al darreine inſtant del feaſt de Paſche pꝛiſt ſur le terre a paier le rent, & ceſtuy q̃ ad le rent ne aſcũ pur luy vient a demander ou receiũ ceo, la ceſtuy q̃ ad le rent ne poit veñ in abſence del tre tenũt & dõe ceo, et illint faire luy vn diſſeiſoꝛ, et rend damag̃ et coſts ſanz aſcũ default in luy: Mes in tiel caſe, cey q̃ ad le rent, pur ceo que default fuit fait in luy, doit fait dõ de ceo ſur l' tre al plon dl tenãt & ſi ne poit luy troñ ſur aſcũ pt del tre hoꝛs de q̃ le rent e̊ iſſuant donqs in tiel caſe ſi couiẽt dõer le rent al pchein feaſt de Paſche oue touts les arrerages, et conſt q̃ c̃ ſoit in abſence del tenũt, vnc c̃ amounta a vn denier in ley, et ſur c̃ ceſtuy q̃ ad l' rent recoña touts les arrerages, damages, et coſts.

Diſ-

Diſcontinuance de proces, &c. per mort le Roigne.

Trinit. 1. Iacobi.

LE reſolution des Iuſtices ſur le mort le roigne Elizabeth concernaunt diſcontinuance des proces, &c. ſont deux maners de reſummons et reattachiements (un generall, lauter ſpecial. Leffect de generall eſt, que le Roy direct briefe (exempligratia) al banke le Roy in ceſt forme, Mandam' vobis, quod ad ſectam noſtram omnium-que ligeorum populi noſtri, qui proſequi voluerint extra & ſuper omnia ſiue aliqua recorda, placita, breuia, præcepta, proceſſus, billas, loquelas, appella, fines, & alia memorāda quæcunq; in curia noſtra corā nobis exiſtentia, vel in poſterum coram nobis prouentur, omnimoda breuia reſummonitionum, reattachiament', & omniū aliorum proceſſuū pro nobis & dictis ligeis populi noſtri in hac ꝑte habēd' ſecundū bonas intentiones & propoſita ſubſcript' mutatis mutandis' prout caſus requirit, ſecundum diſcretiones vras adiudicetis. Speciall reſummons eſt de tiel forme. Rex vic' Salutem. Reſummoneas per bonos ſummonitores A. B. qd'ſit corā nobis, in cr̄o, &c. vbicūq; tunc fuer in Angl', audit' record'et iudiciū ſuū de loq̄la que fuit in cur̄ dñi Henr̄ nuper regis, &c. ita qd' loquela illa tunc ſit in eodē ſtatu quo fuit in priſtina curia prædicti nup regis in octabis, &c. vltim̄ præterit', de quo die loquela prædicta adiornat' fuit vſq; &c. tūc proxim̄ ſequ eñ aute quē diē loquela prædict' remāſit ſine die, eo qd 'prædict' nuper Rex diem ſuum clauſit extremum. Et nota ſur le generall reſummons loziginall et le iſſue (ſi aſcun ſoit ioine eſt reuiue, car ceo eſt pleine recozd, et doit eſtre entre, mes le ꝓces deuant le iſſue ioīt̄, ne le bouch, ne le garniſbūt, &c. ne ꝑ̄ reuiue ſans eſpecial bē̄ reoltāt tout le ſpecial ꝓeding. 5. H. 7. 40. 9. H. 6. 41. 13. E. 4. 1. 1. E. 5. f. 2

Et

Et appiert per le liure de Entries tit. Reattachment 499. q̄ si issue soit ioyne, et Jurie returne, et iour done pur tryal, deuant q̄l iour le Roy morust, vncore per speciall resummons tout serra reuiue, car le Jurie fuit returne de record, & le record de ceo fuit fait pleinᵉ & perfect: et oue ceo accordᵗ 3. Ma. 118. Dier. Vide 21. E. 3. 44. contr̄ in case de aide prier, car la l' Jurie nest reuiue coñ la est tenᵘ, mes Venir fac' de nouo serr̄ agard. Et est ascauoir, q̄ le def. ne vnqs auer̄ resummons ou reattachm̄t, pur ceo q̄ il nauoit ne poit auer summons ou attachm̄t: et pur ceo, al common ley, si vn verdit vst pas pur le def. & deuant le iour in bank le roy morust, in cē cas l' pl' est discontinue, & le def. poit p Certiorari remoue le record, et coñt q̄ les parties ne vnqs pleadr̄ ascū plea, vnr̄ le def. couiet suer Scire fac', et p̄ ceo dañ iudgem̄t, mes sans Scir̄ fac' il nauer̄ iudgement pur ceo, q̄ les parties noūt iour in court, et le Scir̄ fac' reuiua le record, & donera iour al parties, encoūr̄ lopinion de Littleton 10. Ed. 4. 13. coñt q̄ il dit que illint fuit adiudge, q̄ le defendāt in tiel cas maintenant auerоit iudgem̄t. Mes al common ley per le demise le Roy le plea fuit discontinue, et le proces q̄ fuit agard, et nient returne deuant le mort le roy fuit pde: car p le bē de l pdecessor riē poit estre execute in le temps del nouel roy, sinon q̄ il soit in especial cases; car p le mort le roy, non soleñt les Justices de lū bāke et de lauk, et Barons del Exchequer, mes lez viconts auxy, et eschetors, et touts commissions de Oier et Terminer, gaole delituery, et Justices de peace, sont determine p le mort le predecessor q̄ eux fuit: et p̄ le remedie de ceo fuit lestatute de 1. Ed. 6. ca. 7. fait, que puruieu que per le demise le Roy ascun action, suit bill, ou plaint, that shall depend betweene partie & partie in any of the kings Courts, and other Courts of record, shall not in any wise be discontinued or put without day, but that the proces, pleas, demurrerers, &cō-tinuances, shall stand good & effectual, and bee prosecuted and sued forth, in such man ner and forme, and in the same state, condition, and order, as if the same king had liued. Jllint que ore, si ascun iudicial brieue ou proces in ascun court de record fuit agard in temps del predecessor, ceo ore poit estre execute in temps del successour, 1. Elizab. 165. accordaunt. Mes vncore cest act nad prouide remedie pur touts les mischiefes. Car ℂ 1. si le originall ne soit return e deuant le mort le Roy, ceo est pde, car les parolx sont dependant in ascun court: Mes, in Appeale de mort, si le brief soit deliuer al vicont deins lan, et dueant le returne de ceo, ou que l' vicont ad fait riens, le Roy soy demist, et lan expire deuant leiour del returne, in cest case le common ley donera remedie al plaintife & vn Certiorari al vicount retournable in banke le roy, et sur ceo

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le pl auera reattachment, coment que ceo ne vient eins per le returne del vic mes per Certiorari, et le reason est, pur necessitie del matt, car autrement le plaintife, que loyalment purchase son bre deins lan, sans ascun default in luy, perdra son appele lan esteant ore pas, et pur ceo intant q̄ per act in le ley bre est discontinue, le ley donera meane a reuiuer ceo, au fine que le partie ne sra sauns remedie. Jsint si home purchase Formedon vers pernor des profits deins lan apres title accrue, si deuant le returne del brefe, &c. le Roy soy demist, le bre serra remoue in le Common bāk per Certiorari, et sur ceo il auera resummons, pur le mischief, com̄ est tenus, 10. E. 4. 13. b. & 14. a. ¶. 2. Per le mort le roy les offices de vicōts sont determine, et pur ceo tanq̄ nouels patents de lour offices rien poit estre fait: mes in Londres et autres lieux ou sont vic de inheritance per chre, la tis poient execute ascun proces ou iudicial bre agard in temps del predecessor. ¶ 3. In le Countie Court et autiels courts, queux ne sont Courts de record, ceo remaine come fuit al common ley, car les paroles del act sont, in any of the kings courts, or other Court of Record. Jury lestatute extend solement al actions, suits, &c. inter party & partie, & pur ceo, ceo nextend al cases ou le Roy est party: et oue ceo accord Stamf. 98. b. et pur ceo est necessarie a scauer, q̄ le common ley est in tiels cases. Si infozmation de intrusion, ou auter infozmat̄ soit preferre, ou merement pur le Roy, ou tam pro dño rege quam pro seipso et le defendant plead al issue, ou demurrer soit iopue, et puis l' roy mozust, tout est abate et pdue, forsque solement le infozmation, et ceo estoiera: car lentrie in Lescheqer est) monstrant le continuance et mort le roy H. 8. (p quod loquela remansit sine die, & dominus Edwardus ipsum nuper regē in regimine huius regni successit, ac regimen eiusdem regni super se assumpsit, super quo concordatum, quod prædict' defendens attachietur de nouo ad respondend' dicto domino regi nunc, et sur ceo attachmēt est agard, sur le returne de quel le defendant appiert et pleadet de nouo: car coment que voier est, q̄ le roy in genere ne mozust (car est nul interregnum) vncore in hoc indiuiduo, s. Henry le Roy, et Edward le Roy, &c. mozust. Et ceo appiert per record Hill' anno 6. Ed. 6. Rott' 50 Infozmation de intrusion fuit preferre vers John Scheymsal esq. pur intruding in le Mannor de Offeley, in le countee de Stafford. Simile recordum Michael' anno 6. E. 6. Rott. 15. infozmatiō preferre p Attourney le Roy pur le Roy solement vers Michael Harecourt sur lestatute de Maintenance: Hill' 5. E. 6. Rott. 23. in Scaccario in infozmation sur lestatute de 32. H. 8. pur buying de titles, tam pro dño rege quam pro seipso, & apres issue le roy mozust, et def. appiert sur

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le attachment, et plead de nouel: ſimile p idem Recordum Rot' 24. ſimile p idem Recordum Rot' 54. ſimile Mich. 1. & 2. Ph. & Mar. in Scaccario Rot' 131. in inſormation ō intruſion vers Rich. Aſford, que appiert p plead vn ſpecial plea, ſur que fuit demurr' in ley, & le demurr' enter & puis le roigne Mary morust, & ſur ceo Subpena iſſuit d'appearer de nouo, retornable termin' Hill' 1. Eliz. que eſt in ligula breuium ibidem, et ſur ceo le defend' plead auk ſpec' plea, ſur que iſſue fuit priſe. Et note a tiel effect come les preſidents ſone in le ſchequer, illuec ils ſont auncien hābe le roy, quāt a touts maners de inſormations. Simile Paſche 5. E. 6. Rot' 38. ou in populer action le roy morust apres demurr' ſur le euidence, et deuāt iudgement, & le def. plead de nouo. Sur queux record le ley appiert deſtre, q̄ in touts les dits caſes le roy eſteant mere' party, ou quant le inſormation eſt tam pro dño rege quam p̄ ſeipſo, quant le roy morust deuant iudgement, tout le proceding ſur le inſormation eſt tout ouſter' abate & vde, quia rex Henricus, &c. fuit pars qui mortuus eſt: mes le inſormation ou inditement, que eſt record pur le roy eſtoiera, & le def. ſer' chale a reſponder a ceo de nouo, & riens eſtoier' forſque le inſormation, car ceo eſt record & ne poet abater. Et le ley ad graund reaſon in ceo, car ſur pluſors penal ſtatutes le ſuit eſt deſtre commence deins certaine temps, et pur ceo, ſi le inſormation ou inditement ne continuer' in force apres le mort le Roy, loffence ſerra diſpunie per le mort le Roy, que eſt le act de dieu. Mes ſi le roy port original brieſe come de Quare impedit, &c. la per le mort del roy le brieſe abater', quia le Roy pur que iudgement ſerra done, eſt mort, et apres le mort le Roy, que eſt partie, nul proceſſe poet eſtre agard ſur le original, come poet eſtre ſur le inſormation ou inditement. Vide Michael' 3. & 4. Elizab. 206. Vide 4. Edw. 4. 43. & 44. & Brooke tit' Offices 25. Si vn ſoit indite in temps del vn Roy et pleade al iſſue, et puis le Roy morust, il pleadra de nouo, come poies veier in le caſe de Edward Smyth, que pleade al iſſue ſur inditement de felonie in Midd' in 3. & 4. Phil. & Mar. in banke le Roy, et puis le mort le roigne Marie replead in 3. & 4. Elizab. et fuit acquite. Iſſint Clement Palmer eſteant arraigne in banke le Roy ſur vn nonſuite in appeale al ſuit le roigne Trinitat' 4. & 5. Phil. & Mar. et pleade al iſſue, le roigne Marie morust, & Michael' 1. & 2. Elizabeth. il replead. Vide Paſche 1. Edward. 5. trauers dun office in le Chauncerie, et le record miſe in banke le Roy, et puis le Roy morust. Et per le dit Statute de 1. Edward. 6. eſt puruieu, That in all caſes, where any perſon or perſons heretofore haue been, or hereafter ſhall be found guiltie of any manner of treaſon, murder, manſlaughter,

ſlaughter, rape, or other felonie whatſoeuer, for the which iudgement of death ſhall or may enſue, and ſhall bee repried to priſon without iudgement, &c. that the Iuſtices of Gaole deliuerie ſhall haue full power and authoritie, to giue iudgement of death againſt ſuch perſon ſo found guiltie and repried, &c. **Deuant ceſt act, al common ley, ſi home ad eſtre indite p conuict p verdit ou confeſſion deuant aſcun commiſſioners, p deuant iudgement le roy mozuſt, in ceſt caſe nul iudgement puit auer eſtre done; car le roy, pur que iudgement ſerra done, eſt mozt, & lauthoritie de les Judges, que donek le iudgement, eſt determine: et ceſt act remedie ceux ſpecial caſes; mes tout ſuits le roy per original, bill, information, ou inditement pur aſcun auter offence remaine al common ley.**

Mich.

Mich. 2. Iacobi.

Case de fine leuy per le Roy tenant in taile, &c.

LE Roy fuit informe, q̄ diuers mānors & terres fuer intaile al Gilbert de Clare Countee de Glost, & le Roy, q̄ ore est, est heire del corps del dit Gilbert inheritable al dit fre, astū de q̄x mānors le Roy & auters de ses progenitors, pur bone consideracō, dunt grant a diuers subiects, touts queux grants (come fuit pretend) fuer in respect del dit auncient estate taile outerrūt void. Le Roy que ore est, de ton grace & bone volunt a ses subiects, & pur lour quiet & repose, requitr Popham chiefe Justice et Coke lattorney generall, a consider coment p ley il pūt estadlier lestate des dits patentees & auters claimant dessouth eux, enconter le dit estate taile. Sur q̄ ils seuerallm in le vacation temps consider sur cest point, & puis, sur conference ils agreont in vn, que le Roy esteant tenant in taile p bone fait a ascun de ses auncestors esteant subiects (come le question est mōue) poet, p fine leuer sur grant & render, barre lestate taile, & ceo pur diuers reasons. ¶ 1. Intant q̄ le Roy est lie per lestatute de donis condition, come est adiudge in le seignior Barkleys case, in Pl.com. 240. p quel act le Roy est restrain de alienation, car est purvieu p mesm̄ le act, quod finis ipso iure sit nullus, reason voet q̄ le Roy prendra benefit del acts de 4. Hen. 7. & 32. H. 8. q̄ inable tenant in taile a barrer ses issues: car est agree in tout nostre liures, q̄ le Roy prendra benefit dascun act coment q̄ il ne soit nosm̄, 12. H. 7. 21. 35. H. 6. 60. Seignior Barkleys case. Pl. com. 240. & serra dure, que le Roy, esteant issue in taile dun done fait al subiect, serra in peior condic̄ q̄ sil nad estre Roy. ¶ 2. Est graund diuersitie, quant le Roy claime in respect de son natural capacitie, come heire de corps, p formam doni come heire del corps dun subiect, car la il serra ly p vn act de parliam̄t, (& ceo fuit le principal reason del iudgem̄t in le case del seignior Barkley, ou le done

fuit al roy H.7. a aux heires de ſon corps. Et quant le roy claime choſe in reſpect de ſon royal & publique capacitie, la vn general act ne lera luy ſinon q̄ il ſoit expreſſment nosm. ſinō q̄ il ſoit in ſpēc caſes. ¶ 3. In le caſe al barre, le barre q̄ leſtat de donis condic' operak, eſt vers les iſſues in taile, car tenant in taile meſm̄ ſans laid del act poet barrer luy meſme (et iſſint poet le Roy auxy per ſpēc grant.) Donqs les iſſues in taile, al temps del fine leuie p̄ le roy, ſont forſcz ſubiects q̄x ſont lie p̄ les dits acts, et leſtate taile barre p̄ le fine & p̄clatiō. Et nota, q̄ le act de 32. H.8. recite, q̄ (for auoyding of all ſtrifes and controuerſies) quel parol general (all) include auxi le caſe del roy. Et fuit obſerue, q̄ leſtatute de donis cōditiō, q̄ lia le roy, dit, quod domin' Rex perpēdens, quod neceſſariū eſt in caſibus prædictis ponere remedium, ſtatuit, quod voluntas donatoris, &c. a leſtatute de 4. H.7. que done poyar a doctor leſtate taile dit. The king conſidereth that fines ought to be of greateſt ſtrength to auoyd ſtrifes and debates, and to be a final end & concluſion: It is enacted that after the fine engroſſed & proclaimed, &c. the ſame fine ſhall conclude privies, &c. deins quels parols, les iſſues le roy ſont include. Auxy leſtatute de 32. H.8. pruuieu, That all fines leuied of any lands intailed to the perſon ſo leuying the ſame fine, or to any of his anceſtors, &c. et Gilbert de Clare fuit in proprietie de ſpeach auncestour al roy, et iſſint deins lexpres letter del act. Mes ſemble a aux q̄ apres le renderfait eſt neceſſarie dauer lēs patent, a graūt al conuſee, p̄ expres parols, q̄ il poet enter in la terre: car autrement, le fine eſtreant executorie ſur graunt et render, poet eſtre doubt, ſi il conuſee ſans aſcun tiel graunt poet enter ſur le Roy. Et puis Mich. 5. Iacobi apres le mort de Popham, ceſt opinion, ſur conſideration et conference eux que Fleming et Coke chiefe Juſtices et Tanfield chiefe baron, fuit affirme pur bone ley, pur les reaſons et cauſes auantdits. Et diuers fines ont eſtre leuy p̄ le roy accord a ceſt reſolution.

Neuils

Mich. 2. Iacobi.

Neuils case.

En mesme cestuy terme cest case per maundement le Roy fuit propound a touts les Justices. Anno 21. R. 2. Rafe Neuil Seignior de Raby fuit per lies patents desouth le graund seale create counte de Westmerland a luy et a les heires males de son corps, quel Rafe per Margaret Stafford son primer feme ad ille Rafe counte de Westmerland, et que Charles tiedes counte de Westmerland fuit lineal heire male del corps del dit Rafe le primer donee; et le dit Rafe le primer donee p Joan file de John de Gaunt Duke de Lancastre nuoit ille George seignior Latimer (car touts son eigne freres sont morts sans ille male) de q̄ est lineal mit discend Ed. Neuil, que orest le pluis procheine ille male al dit donee: et puis Charles counte de Westmerland fuit attaint per bl̄ag̃ et per parliament de haut treason, et deuie sans ille male, et ore le dit Ed. Neuil claime destre counte de Westmerland. Et in cest case 3. questions fueront moue a touts les Justices denglitert. ¶ 1. Si le dit limitation del dit dignitie al dit Rafe et ses heires males de son corps soit deins lestatute de donis conditionalibus; ou fee simple conditionell al common ley. ¶ 2. Admittant que ceo fuit estate taile deins le dit statute, si per lattainder de treason lestate taile fuit forfeit, per vn condition in ley tacite annexe al state de dignitie. ¶ 3. Si lestate de dignitie fuit forfeit p lact de 26. H. 8. cap. 13. ou que le dit Ed. Neuil come heire male del corps del primer donee doit estre counte de Westmerland. Et ceux points fuer argue et debate al Sericants Inne in Fleetstreet per le attorney le Roy, et per le councell del dit Ed. Neuill. Et quant al primer fuit obiect que le dit dignitie ne fuit deins lestatute de donis condition̄ pur diuers causes: 1. pur ceo que ceo fuit vn grand dignitie derive del roy come le fountaine de

tout dignitie, & pur ceo nest deins le dit act, q̄ parle solemt de tenementis, quæ multo tiens dantur sub cōditiō, viz. cum aliquis terrā suā dat alicui viro, &c. illint cest dignitie ne poet estre include deins cest parol tenemt ou fee, 2. Lectum dit, In omnibus p̄dict' casibus post prolē suscitat' huiusmodi feoffari habuer' potestat' alienādi, &c. mes cest dignity fuit inherent al sank del doner, & ne poet estre alien ou graunt, ne puis, ne deuant illue, & pur ceo tiels cases de dignitie fuer hors del mischiefe, les parols, & lentention des feasors del act de donis condic', & lopinion in Manxels case in Pl.com. grant de chose q̄ ne concerne terr ou tenemts ne exercible in terr ou tenemts, come vn annuitie, q̄ est plonel, nest deins le statut de donis condic', et cest dignitie fuit dit fuit plonal et annexe al sanke del doner, & p conseqns ne poet estre intaile deins le dit act. Mes fuit resolue p tous les Justices dengleterr, q̄ nosm de dignitie poet estre intaile deins le dit statute, car in le case al barre ceo concern terre, car il fuit fait p lez diz vos patents countee de Westmerland, q̄ p le cōtion lep est grand conservators del peace, & Sheriffs sont appel vicecomites, pur ceo q̄ in auncient temps ils fuer come deputies al cōtes, cont chose ceo est changers pur ceo tiel office de dign fuit assis lieu cōcerne fee, & pur ceo poet estre intaile deins le dit stat, come est dit in Plcom. in le dit case de Manxel. Loffice de Sterward, Receivor, ou Bailife de tiel manno poet estre entaile deins le dit stat, pur ceo q̄ est exercible deins terr: 5. Ed. 4. loffice de Marshal dengleterr fuit intaile, 1 H. 7. 28. estate taile poet este dū forestship: 18. E. 3. 27. office d'serieāscie ou custody del esglise de Nichol fuit intaile: 32. H. 6. 28. le cōstree de Solop fuit intaile al John Talbot chlre, & a les heires males de son corps, & ieo ay vieu vn bē de pliamt in añ 27. H. 6. p q̄ Bromflet fuit sūmō al pliamt p le nosm de seignior Vesey, que limitat in le bē a luy et les heires males de son corps, Et est alcanoit, q̄ sicom in anciēt tēps les Senators de Rome fuer elect à censu, of their reuenues, illint iey in aūcient tēps in cōferring de nobilitie respect fuit eiue a lour reuenues, p q̄ lour dignity & nobility poet este supported & maintained: & pur ē vn chiualer doit auer xx. l. fee p annū, vn barō xiij. fees de chiualer & vn quarter, vn countee xx. fees de chiualer (car ne fuit alcū duke deins Englifee, del tēps del cōquest iesqs 11. E. 3. & le Duke de Cornwall fuit le primer Duke puis le cōquest deins Englifee.) Et l'appiert p le stat de Magna Charta, cap. 2. car tous fois le 4. part de tiel reuenue, q̄ est requisite p ley al dignitie, serra paie al Roy pur reliefe: come le reliefe dū chiualer est v. l. q̄ est le 4. part de xx. l. q̄ est le reuenue dū chiualer; & le reliefe dū barō est C. marks, q̄ est le 4. part de son reuenue, s 400. marks, & include 13.

feods

feods dū chiualer & vn quarter, & le reliefe dū cōtee eſt C.l. q̄ eſt le 4. part de 200.l q̄ eſt le reuenue dū cōtee. Et appiert p̄ leg records del Eſchequer, q̄ le reliefe dū duke amōtet a 200.l. & p̄ cōſequente ſon reuenue doit eſtre 800.l. p̄ annū. Et ceo eſt le reaſon in noſtre liures, q̄ cheſcun del nobilitie eſt p̄ſume in ley dauer ſuffitiēt reuenu tenemēt, ad ſuſtinendū nomē & onus. Vide 3.H.6.48.11. H.4.15.14.H.6.1. Vide le counteſſe de Rutlands caſe, in le 6. part de mes reports. Vide Cambden fol.107. Necdū hæreditaria fuit hæc dignitas (ſcilt comitis) verū cū Gulielmus Normannus, iam victor, ſūmam rerū in hoc regno adminiſtraret, comites creati ſūt feudales, hæreditarij, & patrimoniales, vtin antiquis cartis videre eſt, q̄ tertio denario comitatus, i. qui de placitis proueñ in eodem comitatu. Et cheſcū baron & auē de nobilitie eſt tout z foitz create daſcun lieu. Et oue, a quel value ley ditz auciēt rents in tēpz H.3. & E.1. a ceſt iour amōtēt, cheſcū ſeauoit. Et iſſint fuit clerem̄t reſolue, q̄ le dignity in le caſe in queſtiō fuit deing leſtat de donis condic'. Et oue ceo reſoluē accord̄ō diuers p̄ſidents & experiēce & practife tout z foitz vſe: car le countee de Northūbet fuit intaile p̄ le roigne Mary, al Thomas Percy & a les heires males de ſō corps, & pur defaute de tiel iſſue, q̄ Hēry ſon frer ſerr̄ cōtee, a luy & a les heires males ō ſon corps, & in tiel caſe, p̄ lattaindre de Tho. de treaſon, Hēry fuit puis ſon mort cōtee de Northūb. p̄ force de ſon reñ, & ſon iſſue enioy ceo a ceſt iour. Iſſint Ambroſe Dudley fuit, p̄ la roigne Eliz. create cōtee de Warwicke, a luy & a ſes heires males de ſon corps, et pur defaute de tiel iſſue, q̄ Ro. ſō frer ſerr̄ cōtee, a luy, & a les heirs males de ſon corps: & Rob. fuit create cōtee de Leic̄, in taile oue tiel limitat̄ a ſon frer Ambroſe: & mults aut̄ p̄ūdēts ſont a meſme leffect. Quāt al 2. point fuit reſolue, q̄ comē ceſt dignity ſoit deing leſtat de donis conditiō, vncore p̄ lattaindre de treaſon (ſi leſtatut̄ de 26.H.8. nauoit eſtre fait) ceſt dignitie ad eſtre forfeit, p̄ force dū condition in ley tacite annexe al eſtate de dignitie: car ceux que ſont countees oūt office de grand truſt & confidence, & ſont create pur 2. purpoſes: 1. ad conſulendū regi tempore pacis: 2. ad defendēdū regē & patriā tēpore belli: & pur ceſt antiquitie ad done eux 2. enſignes a reſembler ceux deux duties: car p̄imerem̄t lour teſte eſt adozn oue vn cappe de honoz & cozonet, & lour corps oue vn robe in reſemblāce de cōſeil: ſecondem̄t ils ſont ſuccinct oue vn eſpee in reſemblāce, q̄ ils ſerr̄ foial & loyal a defender lour p̄ince & pays: & de ambideux ceux Bracton ple in ſon 1. liure, cap. 8. Comites, viz. ſiue a comitat' ſiue á ſocietat' nomē ſumſer qui etiā dici poſſunt conſules à conſulendo; reges enim tales ſibi aſſociāt ad conſulendum & regēd populū Dei, ordinātes eos in magno honore, & poteſtat', & nōie,

quando

quando accingunt gladijs, i. ringis gladiorum : per que appert ceux
2. fines q. counſell & defence. Donques quant tiel perſon encourt
le diſtre a fine de ſon dignitie, pſit non ſolemt coſtell mes arters
auxy encont le Roy a luy deſtroyer q de ceſt attaint q dun courſe
del ley, per ceo il ad forfeit ſon dignitie par vn condition tacite an-
nexe al eſtate de dignitie, in meſme le maner come il ceſt ad tayle
dun office de truſt miſuſe ou non vſe ceo, ceux ſont forfeitures de
tiels offices a touts tours per force dun condition in ley tacite
annexe a lour eſtates, come eſt tenus in 11.E.4.1.20.E.4.5.6. 39.
H.6.32.22.Aſſ.34.8.H.4.18.2.H.7.11.14.H.7.1.Pl.Com.370.Ne-
uils caſe. Quant al 3. point fuit reſolue per touts les Juſtices, q
il ceo nuſt eſtre forfeit p le common ley, q per leſtatute de 26.H.8.ca.
13. le dit Charles ad forfeit le dit dignitie, car le poſt del act ſont,
ſhall loſe and forfeit to the Kings highneſſe, his heires and ſucceſſors,
all ſuch lands, tenements and hereditaments which any ſuch offendor
ſhall haue of any eſtate of inheritance in vſe or poſſeſſion, by any right,
title, or meanes : et ceſt dignitie fuit hereditament, et in ceo le dit
Charles auoit eſtate de inheritance, et vn leſtatute dit (in vſe or
poſſeſſion) ceo fuit a expꝛeſſer que tout manner de inheritances
ſeront forfeit pur treaſon, et in lour iudgements touts inheritan-
ces fuer en le vſe ou in poſſeſſion (car ceſt act ne eſtend al dꝛoits
ou tieles) & fuit de neceſſitie a adder ceſt parol vſe, car q le comon
ley vn vſe q ne fuit forfeit reuell p cõdemne ne fuit forfeit p attain-
dꝛe de treaſon. Et quant vn vſe fuit expreſſe, donques le addition
de poſſeſſion fuit neceſſarie, car autrement fuit tiens forſque vſes fu-
rent done al Roy. Et pur ceo fuit reſolue, que annuitie de inheri-
tance ſerr forfeit per force de ceſt act per attainder de treaſon, car
ceo eſt vn hereditament. Et ceo fuit le pꝛimer general act q q vn e-
ſtate in taile fuit forfeit al Roy pur treaſon. Al common ley de-
uant leſtatute de donis cõditionalibus, ſi terre fuſt done a vn a les
hꝛes males de ſon cozps, in teſt caſe cibſi le donor cõe le donee ad
poſſibilitie, le donor dũ re fuit ſi le donee mozuſt ſans iſſue male,
et le donee dauñ power daliener ſil ad iſſue male : Car ſi le donee
ad iſſue fits, ozr a alcun intent le condition fuit accõplie, car poſt
plem fulciatem il ad poteſtatem alienandi, & le cauſe de ceo fuit pur
ceo q il ayant fee ſimple & ayant iſſue, ſon iſſue ne poit auoider lalie-
nation, pur ceo q il eſtoit fee ſimple dõt ſon pꝛer poit luy barrer. Et
ſemble q le donee & ſon iſſue male apꝛes tiel alienation mouſt ſans iſſue,
uncore le donor q auoit forfeit poſſibility ou condition in ley & nul
reuerſion ou eſtate in luy ne poit reuoſt la fee dis lalienee, car p le
ayant del iſſue le condition fuit accomplie a ceſt entent s. a faire
alienation. Mes in meſme le caſe al common ley ſi le donee auoit

iſſue

iſſue fitz & mozuſt, vnc̃ le fitz nauoit vn abſolute fee ſimple in luy, mes ſoleñt en le power q̃ ſon pier auoit, ſcilt, dalieñ, & ſi tiel iſſue mozuſt ſans iſſue, & ſans alc̃ alienat̃ fait, le fre reñt al donoz, cõe Brian tient 12.E.4.3.& 18.E.3.46.per Huſe: car collateral heire, que neſt del cozps del donee, neſt deins le fozme del done, le limitation eſtoant al hẽs males del cozps del donee, q̃l limitation des heires males del cozps, exclude touts collateral hẽes a inheriter: mes le policie del ley fuit, a doñ poyer aps iſſue dalieñ, pur deux cauſes; lun, q̃ leſtate dñ purchaſer ne ſerat auoid p vn remote poſſibilitie, & ſi le donee & ſon iſſue auxy mozet̃ ſans iſſue, 2.ill apant fee ſimple naſta poyer aps iſſue dalieñ, c̃ ſerãt in manñ vn ppetuitie et reſtraint dalienat̃ a touts iours, q̃l le cõmon ley pur mults cauſes ne voille pmitt̃, et in 4.H.3.tit' Formedon 64. eſt adiudge, q̃ ou fres fuet̃ done in frãkmariage, et les donees auoient iſſue & mozont, et puis iſſue mozuſt ſans iſſue, q̃ ſon collateral hẽe ne inheritet̃, car le doñ recouet̃ la fre in Formedon in reuerter: et in le dit caſe, ſi le donee ad iſſue deux fitz & mozuſt, et le eigne fitz ad iſſue fille & mozuſt ſans iſſue male, l puiſne fitz inheritet̃ vn fee ſimple p formam doni al cõmon ley: iſſint ſi fres fuet̃ done al vn & a les hẽs femalez de ſon cozps, & il ad iſſue fitz & fille & mozuſt, la fille inherit eſtate in fee ſimple p formam doni. Et nota bene, le ſtatute de donis conditionalibus ne create eſtate taile, mes de tiel eſtate q̃ fuit fee ſimple cõditionel, & diſcendible in tiel fozme al common ley, cõe oza p leſtatute le fre diſcendet̃: & le ſole miſchiefe fuit, q̃ le donee aps iſſue, auoit poyer dalieñ in diſheriſon de ſes iſſues, et barr̃ del reuerſion: mes appiert p le dit act, q̃ cõſt q̃ le donee auoit iſſue, vncoze il nauoit abſolute fee, iſſint q̃ le collateral hẽe del iſſue inheritet̃, car les parols del act ſont: Et præterea cum, deficiente exitu de hmõdi feoffatis, tenementum ſic datum ad donatorem vel ad eius hæredes reuerti debuit, p formam in carta de dono hmõdi expreſſam, licet exitus ſi quis fuerit, obiiſſet, p factum tamen & feoffamentũ, &c. excluſi fuerũt hucuſque de reuerſione, &c. p q̃ appiert, que ſi le hẽe in taile diuie ſans iſſue, & ſans alc̃ alienat̃ fait, q̃ le fre reuertet̃ et p conſequence ne diſcet̃ al collateral hẽe. 30.E.1.tit' Formedõ 65. Si donee in taile alien deuant leſtatute, et puis ad iſſue, et puis iſſue deuie ſans iſſue, le fre reuertet̃, car il nauoit poyar dalieñ al temps del alienat̃, mes tiel alienat̃ barret̃ liſſue, cõe eſt adiudge in 19.E.2.tit' Formed 61. pur ceo q̃ il claim fee ſimple. Nota bene, ceux rules vnc̃ tient lieu in caſe de greaunt de annuitie a vn et a les hẽs males de ſon cozps, et a touts aut̃ inheriances, q̃ ne ſont deins le ſtat̃ de donis conditionalibus.

Hillar 2. Iacobi.

Penall Statutes.

EN meisme cestuy terme fue liez direct al Judges, dauer lour resolution concernant le validitie dun graunt fait per le Roigne Eliz. de touch le graund seale, del penaltie & benefit dun penal statute, oue power a dispenser oue le dit statute, & a faire garrant al Chauncellor, ou garden de graund seal, a fait quant des dispensations, & a quel il a luy pleis, & fue graund consideration & deliberation per tours les Justices Dengleterre fuit resolue, que le dit graunt fuit tout outterlie enconeerley. Et in cest cale ceux poins fueront resolue. Que quant vn statute est fait per Parliament, pur le bien publike del Realme, le Roy ne poit done le penaltie, benefit, & dispensation de tiel act al aseun subiect, ou a doner power al aseun subiect a dispenser oue ceo, et a faire garrant al graund seale pur licences in tiel cale desire fait: car quant vn statute est fait pro bono publico, & le Roy (come le teste del bien publique & le fountaine de iustice & mercie) est per tout le Realme trust ove ceo, cest confidence et trust est ey inseperablement adioyne & annexe al regal person del Roy, in ey haut point de soueraignetie, q il ne poit transferre ceo al disposition ou power dautiel private person, ou al aseun private vse: car ceo fuit commit a le Roy per tours les subiects, pur le bien publique. Et il poit grant le penaltie dun act, il poit grant le penaltie de deux, & sillint infinitum. Et tiel graunt daseun penal ley ne vnques fuit bien in nostre liures, ne deuant cest age aseun tiel graunt fuit vnques fait: mes voier est, que le Roy poit (sur aseun cause mouant luy, in respect de temps, lieu, ou person, &c.) faire vn non obstante

a dis-

a diſpenſer oue aſcun particuler ꝑſon, que il ne incourge le penaltie del ſtatute, et ceo accordo oue noſt̄ lures: Mes le Roy ne poit commitre le eſpee de ſon Juſtice, ou le huille de ſon mereie, concernant aſcun penal ſtatute, al aſcun Subiect, come eſt auantdit. Fuit auxy reſolue, que le penaltie daſcun Act ne poit per aſcun graunt le Roy eſte leuie, forſq; ſolement ſolonq; le purport & puruiew del Act; car le act que done le penaltie doit eſte purſue tantſolement, in le ꝓſecution & leuying de ceo. Et graund inconuenience ſur ceo inſuera, ſi penall leyes ſerront tranſferre al ſubiect. 1. Juſtice pur ceo ſerra ſcandalize; car quant tiels forfeitures ſont graunt, ou ꝓmiſe deſte graunt deuant q̄ ils ſont recouer, ceo eſt le cauſe de pluis violent et vndue ꝓceeding. 2. Quant eſt ouertm̄ conus, que le forfeiture & penaltie del Act eſt graunt, ceo eſt graund cauſe que le act meſm̄ neſt pas executo; car le Judge, et Juroꝛs, et cheſcun auter eſt per ceo diſcourage. 3. Sur ceo enſueroit, que nul penaltie ſerra per aſcun de parliament done al Roy, mes limitte a tielx vſes, oue q̄x le Roy ne poit diſpenſer. Et ſur ceo, diuers queux auoyent ſue dauer benefit de certeine Penall leyes, fuer ſur ceſt reſolution denie. Et le certificat de touts les Iuſtices Dengliterre concernant tielx graunts de penall leyes & ſtatutes fuit in ceux poix, May it pleaſe your Lop we haue (as we are required by your honorable Letters of the xxj. of October laſt) conferred & conſidered among our ſelues (calling to vs his Maieſties Councel learned) of ſuch matters as were thereby referred vnto vs, and haue thereupon with one conſent reſolued for Law and conueniencie as followeth: Firſt, That the proſecution and execution of any penall Statute cannot be granted to any, for that the Act being made by the policie and wiſdome of the Parliament, for the generall good of the whole Realme, and of truſt committed to the King, as to the head of Iuſtice, and of the weale publique, the ſame cannot by Law be transferred ouer to any Subiect; neither can any penall Statute be proſecuted, or executed, by his Maieſties graunt, in other manner or order of proceeding, than by the Act it ſelfe is prouided and preſcribed: Neither doe we finde any ſuch grants to any in former ages: and of late yeares vpon doubt conceiued, that penall Lawes might be ſought to bee granted ouer, ſome Parliaments haue forborne to giue forfeitures to the Crowne, and haue diſpoſed therof to the reliefe of the Poore, and other charitable vſes, which cannot be graunted or imployed otherwiſe. We are alſo of opinion, that it is inconuenient, that the forfeitures vpon penall Lawes, or others of like nature ſhould be granted to any, before the ſame be recouered or veſted in his Maieſtie by due and lawfull proceeding: for that in our experi-

nocence it maketh the more violent and vndue proceeding against the subiect, to the scandall of Iustice, and the offence of many. But if by the industrie or diligence of any there accrueth any benefit to his Maiestie, after the recouerie, such haue beene rewarded out of the same, at the Kings good pleasure, &c. Dated 8. Nouembris 1604. Et a cest Letter toutes les Justices Dengliterre subscribe lour maines.

Mich.

Mich. 5. Iacobi.

Lillingſtons caſe.

IOhn Duncumb pozt action de debt vs Thomas Lillingſton (que commence in common bank, Paſchæ 4. Iac. rott 704.) pur 195. l. i coūt, q̄ vn Fauſtine Dixwel et Marie ſa feme, et le dit Thomas Lillingſton & Marie ſa feū fuer ſeiſie del Rectozie de Lillingſton in coūn Bedf. in fee, & Mich. 31. El. leuiont ent vn fiñ al Papwozth & Chambers & al heirs de Papwozth, q̄ graunt & renō vn rent charge de 30. l. hozs del dit Rectozie al dit Fauſtine pur ſon vie, a cōmenc̄ pu̅ le mozt de Marie ſa feū, le rent annueliñt deſt̄ pay al feaſts de S. Mich. Iarchangel. et Lannunciat̄; Prouiſo ſemp, qd̄ conceſſio p̄d̄ andualis reddit' 30. l. non aliqualit' ſe extendat ad onerand̄ p̄ſonas dict' Papworth & Chambers, ſed tantummodo ad onerand̄ dict' Rectoriā tota vita ipſius Fauſtini, & renō le dit Rectozy al Fauſtine et Marie duſ̄ le vie del Mary, le remainō al Thom. Lilinſton et Marie ſa feū in talle, le reū al dīt hēs de Lillingſton, 2. Oct. añ 33. El. le dit Fauſtine, deuāt Mr Chriſtoph. Wray chiefe Juſtice, conuſt vn recognizance de 500. l. in nature dñ ſtat ſtaple, ſolonq̄ leſtatute de 23. H. 8. al Duncumboze pl̄. 20. Aug. 39 El. Marie le feme de Fauſtine mozuſt, puis que mozt Lillingſton & Marie ſa feme enſ̄ in le dit Rectozie, & fuer enſ̄ ſeiſie in talle oue le reū in fee al Lillingſton. Le dit Fauſtine 15. Aprilis 40. El. per ſon fait releaſe al dit Lillingſton & ſes hēs le dit rent de 30. l. per añ̄le pl̄ 21. Aprīl 40. E. ſuiſt hozs del Chaūcer̄ Certior̄ al clerk dez ſtatutes, &c. ſur q̄ le dit recogniſ in natuſ̄ dñ ſtaſ̄ fuit certifie, et ſua extent, per que le dit rent fuit extend, et ſur Liberate deliuer al pl̄, et le pl̄ pur 6. ans & di. ſtaſ̄ al feaſt de S. Mich. archañ añ 2. Iac. pozt action de debt vers Lillingſton, q̄ tout ceſt̄ tēps fuit teſit del terre, & auerre le vie del Fauſtine. Sur tout ceſt caſe deux queſtions fuer moue. ¶ 1. Si ceſt rent de 30. l. per añ̄, eſtant

extinct per le dit releaſe, eyt tiel eſſeuce quant al plaintife le conuſee, que ceo poit eſtre extend & deliuer al pl. ℂ 2. Admittant que ceo poit eſtre extend & deliuer al plaintife, ſi le pl come ceſt caſe eſt poit mainteiner action de debt. Quant al primer fuit obiect, que ceſt recognizance eſt in nature dun Statute Staple, et leſtatute de 27. Ed. 3. cap 9. a que leſtatute de 23. H. 8. ca. 6. referre, done power aux mayors des eſtaples a prender recognizance des debts, &c. & que, ſur certificat de tiel recognizance in le Chauncerie, ſoit bē maunde de prender le corps des dits debtors ſaunz les mitter al mainprise, et de ſeiſer lour terres et tenemts, biens, & chateux, & ſoit le briefe retourne in le Chauncery oue la certification del value des dits terres et tenements, biens & chateux, & ſur ceo ſoit execution fait de tout in tout, in meſme le manner come eſt contenus in leſtatute Marchant. Sur queux parols fuit bzge, que rent extinct deuant execution ſue ne fuit deins les dits parols, ſ. de ſeiſer les tres et tenements des dits debtors: Car al temps del execution ſue le debtor nad le rent, mes ceo fuit tout outterment extinct & ale per le dit releaſe. 2. Le briefe de Extent eſt de extender omnia terras & catalla ipſius Fauſtini, & in manus dictæ nuper Reginæ ſeiſiri faceret, vt ea præfat' Iohāni liberari faciat, & int ät q̄ le rent fuit extinct deuant le dit briefe de Extent, ceo neſt in eſſe, ou deſtre extend, ou deſt̄ prise in le maine le Roy, ou deſt̄ deliū al pl. 3. Sert̄ enconē reaſon, que, le franktenemt del rent eſte ät extinct, le plaintife aūa execution de ceo, & per ceo dauer forſque chattel: et lopinion in 3. & 4. Ph. & Mar, Dier fol. fuit cite, ou lopinion eſt, que rent extinct ne poit eſtre extend, &c. A que fuit reſponde et reſolue, que a aſcun purpoſes per le Common ley rent extinct ſert̄ dit in eſſe, quant a eſtraunge: & pur ē q̄ſi le baron ſeiſie dun rent in fee releaſe le rent al tenant de terre, et puis le baron mozust, ore la femm ꝑt̄ endowe de ceſt rent iſſint extinct & aūa bē de Dower, les parols de quel briefe ſont, Præc' A, quod iuſte reddat B. tertiam partem trigint' librarum redditus: & bē d' Dower, vnde nihil habet eſt, Præc' A. quod iuſte reddat B. &c. rationabilem dotē ſuam quæ ei contingit de libero tenemento quod fuit, &c. et ſi auera graund Cape, ou petit Cape, come ſon caſe require, de prender le rent in le maine le Roy: car, quoad patentem, ceo eſt in eſſe, coment q̄ in verit̄ le rēt eſt extinct. Et vide in le Sñr Aburgau. caſe fo. 78. in le 6. part de mes Reports, pluſors caſes, ou choſe extinct ſert̄ dit in eſſe, pur le benefit dun eſtraunger. 2. Fuit obſerue que le dit act de 23. H. 8. cap. 6. (per force de que le dit recognizaunce in le caſe al barre fuit prise) pur le execution, referre al Statute Staple, & leſtatute Staple, ſ. le dit act de 27. E. 3. referr̄ al Statute Marchant

chant de anno 13. Ed. 1. les paroles de quel ſtatute ſont (Et quant les terres del dettors ſoyent liuere au marchants, eit il ſeiſin de touts terres q̄ux fuer̄ in le maine de dettour, le iour de la Recognizance fait, in que maines q̄ ils ſont apres deuenus per feoffement, ou auter maner) donq̄s maintenant p̄ le recognizance conus̄, le rent fuit lie, & ſerr̄ extend̄ p̄ le expreſſe purueſt del ſtatute, in quecunq̄ maines que ceo deuiendra: & nient pluis q̄ apres execution eue p̄ le conuſee, le releaſe de Fauſtine iotera, nient pluis ſerr̄ ceo deuant execution; car le rent fuit lie al execution maintenant per le Recognizance conus̄. Iſſint ſi home ad iudgem̄t a recouer det ou damages, p̄ ceo le rent q̄ il ad daſcun eſtate de franktenem̄t eſt liable a ceo; & pur ceo, com̄t q̄ apres iudgem̄t il releaſe ceo, le pl̄ aſſa execution dun moitie per Elegit, q̄ eſt done per leſtatute de Weſtm̄ 2. cap. 18. les poln̄ de q̄l ſtatute ſont, Liberent ei medietatē terræ debitoris, quel p̄ conſtruction del ley eſt de tout que il ad al temps del iudgement done, ou a alcun temps puis. Et in le caſe de Chenie in le court de Gards, añ 27. Eliz. fuit reſolue, que ou ceſty in reuerſion infeo ſe le leſee pur ans al vſe des auters, que com̄t q̄ le leaſe ſerr̄ ſurrenderet extinct per le common ley, vncore p̄ le ſauing del ſtatute de 27. H. 8. des Uſes, le terme del feoffee fuit ſaue. Auxy in meſm̄ le Court, añ 28. Eliz. in le caſe dun Iſled, fuit reſolue, que ou le ſ̄nior infeoffe le Copyholder al vſe des auters, q̄ le copyhold eſtate per le ſauing del dit act fuit preſerue. Iſſint in le caſe al barr̄, p̄ le act de Mercatoribus, tout le terr̄ (que include touts hereditam̄ts extendable) q̄ le dettor auoit al iour del recognizance conus̄ ſerra deliuer, q̄l act p̄ſerue le rent deſte in eſſe quant al execution del conuſee. Et le caſe in 21. E. 3. 18. & Fitzh. Na. Br̄. 223. ſi Seignior & tenant Abbot ſoit, & le ſeignior releaſe al Abbot ſon ſeigniorie, ceo eſt Mortmaine p̄ leſtatute de Religioſis, et le ſeignior paramount ſa ceo per force del dit act, & vncore les poln̄ del act ſont, dñus feoditalitèr alienati auera ceo, & p̄ releaſe ceo eſt extinct, & vncore quant al ſeignior paramount, ceo eſt p̄ conſtruction del act in eſſe, & il auera ceo. 3. Serra dure, que le conuſor per ſon act deme ſ̄n barrera le conuſee, q̄ eſt eſtraunger al releas, de ſon execuc̄ del rent, que peraduentur̄ fuit vn p̄incipal cauſe de p̄iſel del dit Recognizance, dauer execution de ceo: et eſt pluis reaſon a relieuer le conuſee, in q̄ nul default ou laches fuit, que le terre tenāt, q̄ ne doit eſte miſconuſant de tielx charges de record. 4. Chelcun execution ad in iudgement del ley, relation & retroſpect al iudgem̄t, come appiert in Shelleys caſe, in le 1. part de mes Reports. Et le dit caſe de Dower, & le graund Cape & petit Cape ſur ceo, et leſtatute de Mercatoribus, q̄ lia tout le terre del conſor

que il ad al tour de recognizance conus, in quecunq; maines q̄ ceo vendra, done pleine & sufficient rēs a touts les dits objections: et lopinion dun Serieant Obiter, in 3. & 4. Ph. & Mar. fuit tout outerment denie. Quant al 2. point fuit resolue per totam Curiam, que laction de Dette ne gist cy longe cōe le extent endure, car cy longe ad le rent continuance, coment q̄ le franktenemēt de ceo soit determine. Et tout ceo, quant a cest point, que fuit resolue in Ognells case in le quater part de mes Reports folio 49. fuit affirme de ste bōe ley, & 9. H. 7. 17. q̄ si seignior grāt son seigniory pur ans, le grantee durant les ans nauera action de det. Et fuit auxy resolue, q̄ coūt q̄ soit expres puis, q̄ le plon ne serr̄ charge in bre de Annuitie, vnc̄ in tiel case apres lannuitie ou rent determin̄ le plon del tre tenāt sera charge in det p̄ les arrerages, pur ć que lannuity est determine, & il ad nul auter remedy, come est tenus in Ognels case & 6. Eliz. Dier 227. la cite. Fuit auxy resolue, q̄ si hōe graunt rent charge pur vie hors de son tre, et le rent est arere, et le grantor enfeffe A. & le rent est arere in son temps, et puis A. infeffe B. & le rent est arere in son tēps, et puis le graūtee morust, les executors aueront act̄ de det vers chesc̄ de eux, pur le rent arere in son temps, car, Qui sentit commodū sentire debet & onus, cōe est auxy tenus in Ognels case.

Mich.

Mich. 5. Iacobi.

Bedels case.

HIll 1. Iac. Rot. 375. in bank le Roy int Eliz. Bedel pl in Dette, & Michaell Bedell defendāt le case fuit tiel. Robert Bedel seisie dun mesuage, &c. in Iuer & Langley in Com̄ Buck. in fee. p sa feme le dit Eliz. ad issue 3. fits, James fuit le 2. fits. & Mich. le def. le 3. le dit Robert per indenture tripartye inter luy & sa feme del del 1. pt, le dit James son 2. fits del 2. part, et le dit Mich. son 3. fits del 3. part, in consideration del natural affection et paternal amour, q̄ il ad al dits James et Michael, et pur lour melioz preferment & aduancement, et al entent q̄ les dits tenements continuek in son nosme & sanke, couenant p le dit Indenture. q̄ il & ses heires estoiek seisie des dits tenem̄ts, al vse de luy mesm̄ pur vie, et apres son decease al vse del dit Elizabeth sa feme pur vie, et puis lour deceases, dun moitie al vse del dit James in taile, et dauter moitie al vse del dit Mich. in taile, &c. et puis Robert mozust, et tout cest matter fuit troue p especial verdict. Et le sole question fuit, si (come cest case est) ascun vse surō al Elizabeth sa feme ou nemy. Et fuit obiect, que la feme ne fuit deins les considerations, que fuek expresse in le Indenture, & nul auter consideration poit este auerk, q̄ est contein in le fait, car tout le substance del agreement des parties fuit referre al fait, et tout couient appiert in ceo, & riens est relinque al parol ou auerrement des parties. A que fuit responde et resolue, que consideration que estoit oue le fait & nemy repugnant a ceo poit este bien auerk, cōe est adiudge 3. & 4. P. & M. Dier 146. in Willers case, quel Vide in le prim̄ part de mes reports in Milmayes case, fo. 176. ¶ 2. Admittant, que auter consideration q̄ est expres in le fait ne puit este auerre, vncore in cest case la est expres consideration, car quant il limit ceo al vse de sa feme pur terme de sa vie, ceo impozt sufficient consideratiō in luy m̄, & ne besoigne ascū auēt, car Manifesta

probatione non indigent, come in 13. H. 4. 17. ou le ſtatute de W. 1. ca. 38. oyde ine, q̄ le vſe de Aſſ. de Mortdaunc' eiect l' term̄ de limitation del coronnit le Roy Henry le third, la eſt tenus, q̄ il inkāt poyt Aſſ. de Mortdaunc' de poſſeſſion ſon pier ou mere, ne beſoigne dalleger, q̄ ceo fuit puis le coronnit le Roy Henry 3. car ceo appiert. Iſſint, ſi le pier tenāt p ſeruice de chiſer inſeſſe ſon fits et heire apparant deins age, ne beſoigne daſurer ceo deſte colluſion, car ceo eſt apparant, Wimbiſhes caſe Plow. Com. & 27. H. 8. Dacres caſe. 33. H. 6. 14. 3. H. 6. 32. & quædam tacita habentur pro expreſſis. Iſſint ſi ieo couenant, q̄ in cōſideration de paīnal amour & affection a mon eigne fits, a eſtoier ſeiſie al vſe de mon eigñ fits pur vie, ou in taile, & puis al vſe de mon 2. fitz in taile, & puis al vſe dun tiel mon coſin in fee, coſint q̄ le conſideratiō expreſſe in poynt reſpect ſoleſnt leigne fits, vnē le conſideration apparāt in le fait, in limiting le vſe a mon 2. fits. ou mon coſin, eſt ſufficiēt in ley a rayſer vſe. Iſſint ſi ieo couenant a eſtoier ſeiſie al vſe de mon feme, fits. ou coſin, ceo bien raiſer vn vſe ſans aſcū expres poynt de conſideration, car ſufficient conſideration appiert, & paternal amour & affectiō appiert. Mes ſi le pier p fait indent, in conſideration de C. l. pay p ſon fits, couenant a eſtoier ſeiſie al vſe de ſon fits, la nul vſe ſerra raiſe al fits, ſinon q̄ le fait ſoit inrolle, p le ſtatute de 26. H. 8. cap. 10. car ceo eſt in nature dun bargaine & ſale, & la Expreſſum facit ceſſare tacitum. Et puis ſur ceſt iudgemt vſe de Error in meſme ceſtuy terme fuit poyt ſur le nouel ſtatute, et per touts les Juſtices del common banke, et les Barons del Eſchequer iudgemt fuit affirme, Quod nota bene.

Mich.

Michael. 5. Iacob.

Beresfords caſe.

IN Court de Gards int̄ James Bereſford relator, & Thomas Bereſford, & auters defendants le caſe fuit hiſcelnt tiel. Aden Bereſford eſtoant ſeiſie des Manors de Fennibently, Bircham, & auters terres in fee, per ſon fait 14. Iunij 40. Eliz. infeoffe William Fleetwood & auters in fee, al vſes de certain Indentures poſt date 29. Nouemb. 34. Eliz. ſ. al vſe del Aden le pier, for term of his life, and after his deceaſe, to the vſe of George Beresford, ſon and heire apparant of the ſaid Aden, and the heires males of his body lawfully begotten; and for default of ſuch iſſue, to the vſe of Aden Bereſford, ſon of Iames Beresford, and of the heires males of the ſaid Aden ſon of the ſaid Iames, lawfully begotten; and for default of ſuch iſſue, to the vſe of the heirs males of the body of the ſaid Iames Beresford, lawfully begotten; and for default of ſuch iſſue, to the vſe of Thomas Beresford, third ſonne of the ſayd Aden, and of the heires males of the body of the ſaid Thomas lawfully begotten; and for default of ſuch iſſue, to the vſe of Humfrey Beresford, fourth ſonne of the ſayd Aden, and of the heires males of his body lawfully begotten, with diuers remainders ouer, & with remainder to the heires females of the body of George, and ſo of Aden, the ſonne of Iames lawfully begotten, &c. with the remainder to the right heires of Aden the father for euer. Et le ſole queſtion del caſe fuit, que eſtate Aden le fits de James auoit. Et ceſt caſe fuit deux foits argue deuant les deux chiefe Juſtices. et le chiefe Baron al Serieants Inne. Et fuit obiect que Aden le fits de James nauoit fee taile mes fee ſimple, car le limitation a luy eſt, to the vſe of Aden, and of the heirs males of the ſaid Aden lawfully begotten, & icy fault ceux paroix (of the body) of the ſaid Aden, iſſint que oze le limitation neſt que in effect forſq to the vſe of Aden, and of the heires males of the ſaid Aden,

Aden, car ceux subsequēt parolx, lawfully begotten, sont imply, car chescun heire coient estre loyalment engendr̄; et limitation a vn & a les heires males, est sans question vn fee simple. Et vn iudgement in bank le Roy int Abraham & Trigge, Hilt 38. El. Rot' 739. fuit forcment vige, ou feoffement fuit fait al vles de certaine Indentures (come cest case est) ou vn limitation fuit, ad opus & vsum Gabrielis Dormer & hæredum masculorum suorum legitimè procreatorum, &, pro defectu talis exitus, al vse de diuers auters in tayle in remainder; et sur argument al barre et al bench fuit adiudge, que Gabriel ad vn fee simple, car nest limit de quel corps les heires males serr̄ ingendres, mes son intent fuit, quod singuli hæredes sui masculi inherit̄, quel entent ne estoiet oue le rule del ley, et comt̄ q̄ rem̄ sont limit ouster, que ne poyent estre sur fee simple, vncore ceo ne poit encounter le rule del ley, faire parolx de fee simple destr̄ cōuert a vn estate taile: Et ils concludont oue Lit. fol. 6. b. que le reason pur quoy, quant terres sont dones a vn et a les heires males ou females, est fee simple, est, pur ceo que nest my limit per le done de quel corps lissue male ou female issuera; & issint ne poit in ascū maner estre pise p̄ lequitie del statute de donis conditionalibus, et pur ceo c̄ est fee simple. Issint in le case al barr̄: et oue ceo accord̄ le liure in 8. E. 3. 49. ou terres fuer̄ dones a vn et hæredibus suis legitimis, ceo est fee simple, que est tout vn oue limitation a vn & hæredibus suis legitimè procreatis. Mes fuit responde et resolue per les dits chiefe Justices et chiefe Baron, q̄ le dit Aden fits del dit Ja. auoit vn estate taile, per que touts les rem̄ ouster fuer̄ loyalment vestue: car fuit agree, q̄ a vn estate in taile est requisite in touts dones & limitation des vles, que les heires soyent limit destre p̄creat ou engendre dascun corps in certaine, ou per exp̄sse polx, ou parolx q̄ tant amount, car ceux precise parolx (de corpore) ne sont necessarie al creation dun estate in taile, cy long que sont polx que tant amount, come in 5. H. 5. 6. ou le done fuit Dedi vnum mess. R. & K. vxori eius & hæredibus eorū & alijs hæredibus dict' R. si dict' hæredes de R. & K. exeuntes obierint sine hæredibus de se: In c̄ cas ceux parolx (de corpore) sont omise, et vncore adiudge bone estat taile, car sont parolx que tant amount, car le done in effect est, al baron & feme et al heires del baron et feme issuants, ou de dit R. & K. exeunt', ou hæredibus de se, et tout ceo est per force de cest p̄possition (de) & (issuants) Et in 12. H. 4. tit' Bre, fre fuit done a vn & hæredib' quos sibi contigerit habere de vxore sua, icy fault polx de corpore, vnd̄ pur ceo q̄ ceo tant amount ceo est adiudge vn estat taile: & 3. E. 3. tit' Briefe 743. fre est done a vn & hæredib' suis de prima vxore sua, ceo est bōe estate taile, Et fuit resolue, q̄ ils fres sont done a

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vn, & hæredibus de ſe exeuntibus, que ceo eſt bone eſtate taile: et in ceux caſes le principal cauſe eſt p force de ceſt prepoſition (de.) Et diſus auters caſes fuer mile, p q̄ fuit conciuꝺ, q̄ ou parols (de corpore) ou q̄ tant amount, ſont requiſite al creation dun eſtate taile. Et fuit reſolue, que in l' caſe al barre la fuer parolx q̄ tant amoūt, car p lact de donis conditionalib°, volūtas donatoris in carta doni ſui manifeſtè expreſſa de cætero obſeruetur, & pur ceo in ceſt caſe tiel cō-ſtructiō ſic fait, q̄ ꝓducer 3. effects: 1. a eſtoier oue rule del ley: 2. oue lentent del donor: 3. q̄ touts les pts del Indentur poīēt eſtoier: et pur ceo translate le dit limitatiō al Aden in Latin, & dōqs le limitation eſt, ad vſum Adeni & hæredū maſculorū d' dicto Adeno legitimè procreatorū, ou, et hæredū maſculorū legitimè procreatorū d' dicto Adeno, & ceo tant amount cōe il ad dit p dictū Adenum legitimè procreat': car tout eſt vn in effect. Car ceſt pol (de) ou (x) accouple oue pol ſubſequent (p creat') appropriate les heires malles deſt' del corps de Aden: car de Adeno, ou ex adeno, & de corpore Adeni ſont tout vn. Et ceo eſt directm̄ pue p le iudgem̄t in le dit caſe de 5. H. 6. car la fuit (de) & (exeunt') et icy eſt (de) & (procreat') q̄ ſōt tout a vn effect, & in le dit caſe de Abraham & Trigge (de) fault. Et q̄ſt a ceo fuit obiect, q̄ limitation in Latine poit bien eſte, ad vſū dicti Adeni, & hæredū maſculorū dicti Adeni (in l' genitiue caſe) legitimè procreat', & nemy de dicto Adeno, ou ſi le limitation ne ſoit certaine p faire eſtate taile, ſont polx aſſets certaine pur faire eſtate in fee. A que fuit reſponde & reſolue: 1. coulent eſte de dicto Adeno, car autrem̄t ceo ſra enconr entent del donor, et touts les rem̄ ouſter ſra voide, & touts foits tiel conſtruction couiēt eſte fait, q̄ touts les pts del fait poient eſtoier enſemble, ſi ceo poit eſtoier oue le rule del ley: 2. le ſubſequent clauſe eſt, and for default of ſuch iſſue, et iſſue ne poit eſtre del Aden, ſinon q̄ les polx ſont de dicto Adeno; et pur ceo vn clauſe eſt bien explane per lauter: et ſolonqs ceſt reſolution le caſe fuit decree accordō. Vide 35. Aſſ. pla. 14. 37. Aſſ. pla. 14. 39. Aſſ. pla. 24. E. 3. 28. 18. E. 2. Briefe 836.

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Kennes caſe.

IN le Court de gards inter Thomas Robertſon & Elizabeth a ſa fēe pl', & Florence Ladie Stallenge def. le caſe fuit tiel. Chriſtopher Kenne armig̃ fuit ſeiſie del mannor de Kenne in le Countie de Somerſet, tenus per ſeruice de chiualer in capite, et 37.H.8. de facto pris al feme Elizabeth Stowel, & puis le dit Elizabeth Stowel ad iſſue Martha mere del Elizabeth vn des oze pl', & puis 1.& 2.Ph.& Ma. in le court de Audiēce, inſ le dit Chriſtopher Kenne pl' & Eliz. Stowel def. le Judge la done ſentence in ceux polx. Pretenſ.tractat', contract', ſponſalia,& matrimonium, quin verius effigiem matrimonij inter Chriſtopherū Kenne, & Eliz. Stowell in minore & ſua impubertatis ætate eorundem aut eorum alterius de fact'habit',contract',& celebrat' fuiſſe & eſſe, eoſdemq; Chriſtopherū & Eliz.tam tempore contractus & ſolemnizationis dict'pretenſ.matrimonij, quam etiā continuò poſtea idem matrimonio ptenſ. & ſolemnizationi eiuſdē,diſſenſiſſe,cōtraueniſſe,reclamaſſe,& reluctaſſe, ac eo prætextu huiuſmodi pretenſ,tractat',cōtract',ſponſalia,& matrimoniū de iure nullū & nulla,irritum & irrita,caſſum & caſſa,inualidum & inualida, & minus efficax & inefficatia,fuiſſe & eſſe,viribuſq;iuris caruiſſe,carere,& carere debere;nec non antedictos Chriſtopherum Kenne & Eliz.Stowel,quatenus de facto fuer̃ ad inuicem matrimoñ vt prædicitur copulat',ab inuicem ſeperand & diuorciand fore debere pronūciamus,decernimus, & declaramus,eoſq; ſeperamus & diuorciamus, eiſdemq;Chriſtophero &Eliz.licētiam & libertatem ad alia vota conuolanda concedimus, tribuimus, & impertimur per hanc ſententiam nr̃am definitiuam, ſiue hoc finale noſtrum decretum, quam ſiue quod ferimus & promulgamus in hijs ſcriptis,&c. Et puis le dit diuorce,le dit Chriſtopher Kenne eſpouſe & pris al feme Elizabeth Beckwith,& puis anno 5.Eliz. deuant diuers commiſſioners Eccleſiaſticall,

astical le dit Eliz. Beckwith libel vers le dit Christopher Kēne, q̄ il (deuant le mariage int eux contract) ad marie oue le dit Eliz. Stowel, sur q̄ proces fuit agard vers le dit Eliz. p̄ interesse, & sur due examination del cause fuit sentence, que le mariage int le dit Christoph. Kenne & Eliz. Beckwith fuit loyal, & sentence, eux ad exequenda coniugalia obsequia, &c. & que le dit Christoph. Kēne ne vnq̄s fuit loyalm̄t espouse al dit Eliz. Stowell, et puis le dit Eliz. Beckwith mozust, apres q̄ mozt le dit Ch. Kenne prist al feme le dit Florence p q̄ il ad issue vn file Eliz. & mozust, & añ 36. Eliz. fuit troue p office in le countie de Somerset p force dun Mandamus aps le mozt del dit Ch. Kēne, q̄ le dit Eliz. Kēne fuit sa file & heire, & q̄ il fuit deins age, s. al age de 10. moys, le garde et custodie de q̄ le Roigne graunta a sir Nicholas Stallenge et le dit Florence adonq̄s sa feme. Sur que le dit Martha, pretend luy mesme destre file & heire del dit Ch. Kenne, oue son baron Siluester Williams exhibit lour bill in le court de garde vers les dits sir Nicholas et Florence surmittant, q̄ le dit Martha fuit file et heir del dit Ch. Kenne del corps del Eliz. Stowell son loyall feme (come le pretend) allegeant, q̄ ils al temps de lour mariage in añ 37. H. 8. fuer ambideux de eux ouster lage de consent, & q̄ ils cohabite ensemble 9. ou 10. ans deuant le dit suppos'd diuorce, durant quel cohabitation le dit Martha fuit pcreate inter eux, & p̄iout licence, que le dit Siluester & Martha poier trauers le dit office. A q̄ les dits sir Nicholas & Florence respond, & les pl̄ examine diuers testimoignes, & deuant publication sir Nicholas mozust; et sur ceo le dit Siluester & Martha exhibite Bill de reuiuer vers le dit Florence, & puis Martha ayant issue Eliz. feme ore pl̄ mozust, puis quel mozt les dits Tho. Robert son & Eliz. la feme port nouel bill de reuiuer, a reuiuer le primer suit, in q̄ les testimoignes fuer examine. Et cest case fuit referre al Fleming & Coke chiefe Justices, et al Tanfield chiefe Baron, et al Yeluerton & Williams Justices, Snig & Altham barons del Eschequer. Et in cest case 3. questions fuer moue. ¶ 1. Si incounter le dit primer diuorce les pl̄ serront receiue, ey long come ceo remaine in force; dauerrer q̄ ils agreont & consent al mariage, ou que ils serra conclude per le dit diuorce. ¶ Le 2. question fuit, si ils auer trauers al dit office deuant office troue pur eux. ¶ 3. Si ils auer bill de reuiuer sur vn bil de reuiuer, come cest case est. Et les Justices oyent pluiors arguments deuant eux a seueral iours, & in seueral termes al Serieants Inne. Et quant al primer fuit obiect, q̄ appiert p Litt. lib. 2. fo. 22. & p lestat de Merton cap. 6. & 35. H. 6. fol. 40. &c. q̄ l comon ley & pliaints auoient prise notice del age de consent de male destre 14. et de female

male deſtre 12. et pur ceo, ceo eſt triable per le common ley; et ſi in bertie le baron & feme ſont del age de conſent al temps de le eſpouſels, nul diuorce apres, pendant q̄ ils fuer deins age de cõſent, concluder a les pties ou lour heires mes q̄ ils poient pluer le contrary al cõmon ley, & principalm̄t in le caſe al barre, pur ceo q̄ ceo concerne inheritance & le voire diſcent de ceo: & ſententia contra matrimonium nunquam tranſit in rem iudicatam. 2. Admittant q̄ ils fuer deins age, & puis age de conſent ils aſſent ou cohabit, & ſunt iſſue, conſt q̄ diuorce pur impubertie & nunozity des ans ſoit ewe, vncore ceo neſt forſq; euidence, & ne concludet les parties in aſcun action al cõmon ley a pluer laſſent, car intant que le diuorce eſt ewe pur ceſt cauſe, & le cauſe eſt triable p̄ le cõmon ley, le diuorce ne concludera: & 11.H.7.cap.27. fuit cite, q̄ ceſtuy q̄ pleade diuorce conuẽt mẽt le cauſe del diuorce, & ſi le cauſe ſoit triable al common ley (come in le caſe al barre ceo eſt) la ceo ne concludera; mes ſi ſoit choſe nient tryable al common ley come p̄contract, profeſſion, &c. la ceo eſt autrement. Mes quant a ceo fuit reſolue per touts les dits Juſtices & Barons, q̄ le dit ſentence cõcludet cy longe come ceo remain in force, & ceo pur diuers cauſes. 1. Eccleſiaſticall Judge ad ſentence le contract et eſpouſels dẽ voide & de nul effect, & conſt q̄ ils fuer del age de conſent, vncore ſi le originall contract fuit voide et de nul effect, donques la fuit auſi cauſe de diuorce: 2. La fuer paroly de diuorce & ſeperation, eoſdem diuorciamus & ſeperamus, & done a cheſcun de eux libertie ad alia vota conuolanda: 3. Si le mariage bit eſte infra annos nubiles, leccleſiaſtical Judge eſt iudge eſbien del aſſẽt come del p̄mier contract, & q̄ ſerr ſufficient aſſent & q̄ non, & conſt q̄ leccleſiaſticall Judge mẽt cauſe de ſon ſentẽce, vncor intant q̄ il eſt iudge del originall matt̄ s. del loyaltie del matrimony, no⁹ ne vnqs examinerr le cauſe le q̄l ceo ſoit voier ou non: car des choſes quarum cognitio ptinet ad forũ eccleſiaſtic', no⁹ doiom⁹ doñ foy a lour ſẽtẽces, rõe ils donõt al iudgements in nre courts. Auxy le rule de lour ley eſt, Qđ maſculi quidẽ puberes, fœminæ viri poſtẽtes matrimonio conſentire poſſunt, & l'determinatiõ de l'appẽt a lour conuſãce. Et q̄ſt al caſe de 11.H.7.f.27. voier eſt, q̄ le cauſe de diuorce eſt dẽ mẽt, pur ceo q̄ aſſ diuorce diſſolue le matrimony, s. à vinculo matrimonij, baſtard̄ iſſue, & barre le feme de dower; & aſcun à menſa & thoro, q̄ ne diſſolue le matrimony ne barre la feme de dower, ne baſtard̄ iſſue. Mes in caſe de deprziuation le cauſe ne beſoigne dẽ mẽtion car ſoit ceo a tort ou a droit, ſur cauſe ou ſans cauſe, ceo eſtoit, et cheſcun deprziuation diſable et remoue le partie deprziue eſbien pur vn cauſe come per auter, cy longe come le deprziuation remaine

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in force. Vid 8.Ass.9.E.4.24.7.E.4.32.3.H.6.12.H.8.5. Et Coke chiefe Iustice cite l'case in 22.E.4.tit Consultation 5. Cozbets case, ou le case fuit, q̄ sir Rob. Cozbet auoit p̄ Eliz. la fem̄ 2. fits Rob. leigñ & Roger le puisñ, & mozust, Rob. leigñ esteant deins lage de 14. ans p̄ist fem̄ vn Matild, & al pleine age demurre ensemble & habuerūt carnalē copulā, & cogniti & reputati pro viro & vxore palā, & puis le dit Ro. demitt le dit Matild sa fem̄ ayāt nul issue p̄ luy, & espouse vn Lettice, &c. viuāt le dit Matild, & ad issue p̄ luy Rob. & puis Rob. q̄ illint ad espouse L. mozust, & Lettice p̄ceche ouert-ment, q̄ el fuit le loyal feme de Rob. et son fits mulier, per q̄ le dit Roger fits le dit sir Rob. Cozbet suit in Spirituel court a reuiser ceux espouseis enter Robert son frere & Lettice, & que Lettice soit mise a silence, p̄ q̄ Lettice suist p̄hibic. Et in cest case 3. points fuer resolue. 1. Que si Rob. & Matild vsont ewe issue & ount este vn-iustifit diuorce, & puis Rob. vst marie Lettice & ad issue & mozust, la issue de Rob. & Matild puit auer suit in Ecclesiasticall court pur auoider le diuorce; car cy longe come le diuorce estoit in force (le cōmon ley done cy grand foy a ceo) lissue ne puit aūi remedie p̄ le cōmon ley. Et nota in le case nul cause de diuorce appiert, mes pur cause q̄ le mariage fuit ewe quant les parties fuer infra annos nubiles: et in le dit case del diuorce lissue auera son suit a reuerser ceo originalifit in court Christien, car le diuorce est iudgemt spi-rituel & couiet estre reuerse in le spirituel court; mes in le case de Cozbet la est nul diuorce ne auk spirituel iudgemt que disablek le dit Roger, & pur ceo il doit originalifit commence al common ley come heire, & auera touts actions in tempozall court, come heire & touts benefits come heire vers lissue de L. non obstant le 2. es-pouseis: car ils sont voide in touts leyes tempozel et spirituel, & laction & originall a bastard aceun ne serk moue in spirituel court originalifit, quant nul sentence spirituel disable luy, mes si com-mencera in tempozel court, & donques si beloigne soit ils escriek al spirituel iudge si general bastardie soit alledge: & le reason de ceo est, pur ceo q̄ home poet estre bastard in le tempozel ley et mu-lier in le spirituel ley, & è conuerso. Cōe home q̄ est engender in a-uowtrie durāt le couerture est mulier p̄ le tempozel ley, et bastard p̄ le spirituel ley. Et si home bate vn clarke, sil sue in le spirituall court a excommunicater luy pur le peche, il fait bien, mes sil sue la pur auer amend̄ il auera prohibition. 2. Fuit resolue in mesme le case de Cozbet, q̄ quant le spirituel court auera iurisdiction, il couient q̄ tout le cause soit spirituel, come si person libel vers lay home pur dismes impozts, le tempozel court auera iurisdiction, car ceo est mixt oue le tempozaltie: et in mesme le case le matter

eſt mixt (q̄ conſequence) oue le temporaltie, ꝛ. que lun eſt heire a q̄ lauter eſt baſtard: mes ſi le dit caſe de diſmes ſoit int̄ parſon a p-ſon, ou int̄ parſon a lay home, ſi le droit de diſmes vient in queſti-on le ſpiritual court auera tuell diction. Vide Iact de circumſpecte agatis, ou eſt dit, q̄ mere ſpiritualia appent al conuſaunce eccleſiaſti-call, a Linwood cap. de foro competent' fol. 7. dit, mere ſpiritualia ſic dicta, quia non habent mixturam temporalium: a ou le dit act dit, de mortali peccato, Linwood ceo expound et dit, Non intelligas de omni peccato mortali, ſed de tali cuius punitio de ſui natura ſpectat ad forum Eccleſiaſticum: nam ſi de ratione cuiuſlibet peccati mortalis cognoſceret Eccleſia, ſic periret temporalis gladij iuriſdictio, cum vix eſſet dare cauſam quin ratione peccati poſſit deferri ad Eccleſiam. 3. In meſme le caſe de Cozbet fuit reſolue, q̄ quāt tout le cauſe ſoit oꝛiginalment ſpirituel, vncoꝛe ſi apꝛes in ſpirituell court ils ſont a trier tempoꝛell conuſaunce prohibition girra: come ſi lun parſon dit, q̄ le lieu eſt deins ſon parſ̄h, et lauter econ̄, apꝛes tiel matter monſtre prohibition girra, a oue ceo accoꝛd 39. E. 3. 23. & 5. H. 5. 10. Nota leeteur bone diuerſitie int̄ repeale dun ſentence de diuoꝛce done in le vie des parties, et a doner ſentence de diuoꝛce apꝛes le moꝛt des parties: car appiert p ceſt caſe de 22. E. 4. q̄ vn ſentence de diuoꝛce poet eſtre repeale in le ſpirituel court p ſuit la apꝛes le moꝛt des parties, mes ſi aſcun des p̄ties ſoient moꝛt deuāt aſcun diuoꝛce ſentence in le Eccleſiaſticall court, la ils ne poient ſuer in court Chriſtiē a declarer le mariage void a baſtard iſſue; car le triall appent al court le roy oꝛiginalm̄t, ou nul diſabilitie eſt p ſētence in le ſpirituel court: a oue ceo accoꝛd 39. Aſſ. pl. 10. 39. E. 3. 31. & 24. H. 8. tit. Baſtardy 44. b. q̄ diuoꝛce puis l' moꝛt daſcun des parties, ou ſentence declaratoꝛie q̄ le mariage fuit void puis le moꝛt daſcun des p̄ties ne liera. Car ceo neſt q̄ in effect a baſtarder iſſue de q̄ ils nount oꝛiginalm̄t conuſaunce come ad eſtre dit. Vide 19. Aſſiſ. pl. 2. 2. q̄ ſi 2. ſont marie infra annos nubiles, a apꝛs l' pleine age diuoꝛce ſoit pꝛiſe int̄ eux ceo diſſolue le mariage, car la, feme poꝛt Aſſiſe vers ſon baron. Vide Buries caſe in 5. part de mes Reports, fol. 98. & vide Cawdries caſe in meſme le liure, & vide Buntings caſe in le 4. part de mes Reports f. 28. & vid̄ 11. H. 7. 9. & 34. H. 6. 14. & 12. H. 8. 5

Quāt al 2. point fuit obiect, q̄ le pl̄ auera trauers ſans aſcū of-fice troue pur luy. Car quant vn direct et ſufficient office eſt troue in vn countie p̄ poꝛce dū Diem clauſit extremū ou Mandamus puis le moꝛt del aunceſtoꝛ, la ne ſerr̄ vnq̄s office troue avere pur meſm̄ la terre cy longe come ceo eſtoit in ſon poꝛce. Car auterm̄t le ley ne vnques auera fine, a oue ceo accoꝛd 4. H. 7. 15, 14. E. 4. 5, 15. E. 4. 11. 2. H. 7. 21, 18. et pur ceo ſerr̄ dure a chaſer luy a troū office pur luy

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deuant q̄ il poet trauerſ, ou per la ley ſi ne poet trouer aſcun office in tiel caſe. 2. fuit obiect q̄ leſtatute de 2. E. 6. cap. 8. ad remedie ceo ſi aſcun office fuit requiſite p le cõmon ley, leſ poſ de q̄ act ſont. And wheras one perſon or more is or ſhall be found heire to the Kings tenant by office where any other perſon is or ſhall be heire, or if one perſon or more be or ſhall be found heire by office in one countie, and another perſon or perſons is or ſhall be found heire to the ſame partie in another county, &c. be it enacted, that euery perſon grieued by any ſuch office ſhall and may haue his or their trauers to the ſame immediately, or after, at his or their pleaſure, and proceed and haue like triall & aduantage, as in other caſes of trauers. Per que appiert q̄ le partie greue auera trauerſ ſanſ pler daſcun office) & proceed et daſi tiel aduantage come in autre caſe de trauerſ, et in auterſ caſeſ de trauerſ ne beſoigne aſcun office. Apres fuit reſolue que (come ceſt caſe al barre eſt) le plaintife couient dauer office troue deuant que il poet trauerſ: et quant al primer objection fuit reſponde & reſolue, q̄ in tiel ſpecial caſe de trouer dun heire ceſtuy que eſt dꝺoit heire et greue per loffice auera nouel briefe de Diem clauſit extremum ou Mandamus: Car il eſt eſtraunger al dit office, et pur ceo loffice ne concludera luy: et le dit rule et leſ liureſ ſont deſire intendꝺ que meſme le perſon auera nouel Diem clauſit extremum ou Mandamus apres office vn foitz dueſnt troue, meſ auſi pſon ceo auera in ceſt caſe à prouer luy n heire; & one ceo accordꝺ 30. Aſſ. p. 28. Fitzh. Nat. Bꝛ 261. 262. 4. H. 7. 15. 12. R. 2. tit' Liuery 28. Stamford prærog. 52. b. Et q̄ doit eſte office deuant q̄ il poet traūſ le common ley in ē ad grand reaſon, car quant le Roy eſt ſeiſe de gard ou primer ſeiſin p loffice neſt reaſon q̄ aſcun q̄ pretend luy n heire trauerſer loffice q̄ lauter neſt heire tanqꝫ le Roy ſoit ſeiſe dauer pſaſt per luy ou per gard ou p primer ſeiſin, car donques apꝛs le primer office auoide per trauerſ il poet mꝫ matter a barre le Roy del gard & primer ſeiſin q̄ne terr reaſonable: Auxy al common ley enter pleaꝺ giſt ou p 2. ſeiſal officeſ in vn n countie ſeueral pſons ſont ſeiſalm troue hꝛes a vn n pſon a vn n terre, ergo le ptie greue poet aū dꝛe a troiſ office pur luy, car autrm nul inkpleꝺ poet ē, car le hꝛe q̄ fuit primm troue hꝛe alia Scir fac' in le Chauncery dꝛs ceſty q̄ eſt troue hꝛe p le 2. office (pur ceo q̄ le Roy eſt in a weroust a q̄ il ferr liuery ſur q̄ il appeare & iuſtifie le 2. office pur le trial del priuity del ſan[illegible] doit traūſ le primꝛ office (car tout r inkpleꝺ ſꝛ ſur ē) & ſur [illegible] q̄ eſt troue hꝛe auera liuery. Iſſint q̄ appiert clerem̄t q̄ ceſty q̄ trauerſ loffice in tiel caſe doit auer office troue pur luy p le cõmon ley. Et one ceo accordꝺ 36. E. 3. tit' Traūſ 44. 16. E. 4. 4. F. N. B. 162. Car ceſty q̄ doit ſuer

liuery coulent dauer office deuant q̄ il trauerera, entendit dun estranger q̄ destroy le title le roy. Vide 36. E. 3. tit. Trauers 44. 12. E. 4. 18. 16. E. 4. 43. Ass. 20. 9. H. 7. 24. 5. E. 4. 5. 12. H. 6. 46. E. 3. Briefe 618. Quāt al 2. obiection fuit responde et resolue, q̄ le dit act de 2. E. 6. ne done trauers a cestuy q̄ pretend luy mesn̄ destre heire encont̄ vn office trouant pur vn auk heire sans office troue pur luy, car ceo est incident a ceo q̄ nest pas tolle p̄ general pol̄ del act, car dons touts interpleaders serr̄ p̄ ceo tolle auxi, q̄ ne vnques fuit lentention del act, mes lentēcion des feasors del act fuit a toller vn graund doubt q̄ fuit al cōmon ley, si vn soit troue heire deins age p̄ vn office, s puis auter est troue heire in mesn̄ le countie de pleine age, si aīcun trauers s interpleader serr̄ immediatm̄t, ou si trauers s interpleader targera tanq̄ le pleine age del infant fuit vexata questio. come appiert tantes liures, ē. 36. E. 3. tit. Trauers 44. 5. E. 4. 41. 1. H. 7. 14. F. N. B. 161. s. pur ouster cest doubt fuit lestat de 2. E. 6. fait, perq̄ est enact q̄ le ptie grieue auera trauers immediatment, si pol (immediately) ppone lentention del dit act a prouider pur le dit doubt et a doner cestuy q̄ fuit grieue in tiel case trauers maintenant mes nemy de attet le foundation del trauers, ē. office q̄ doit estre troue pur le party grieue deuant q̄ il poet trauers: s ou le statute dit q̄ il auera trauers maintenant, est intend q̄ il doit obseruer touts incidents ta ben trauers, car office est le ground et foundation de son trauers. Quant al 3. point fuit resolue per le greinder pt q̄ vn bil de reuiuer sur bil de reuiuer ne serra admit pur le infinitenes. Car infinit̄ in iure reprobat̄. s nul briefe de tourneys accoūts sur tourneys accoūts serr̄ port. Mes fuit resolue p̄ touts q̄ōe cest case est le darr̄ bil de reuiu fuit absurd, car ceo prie que le primer bil serr̄ reuiue, s le prim bil pria q̄ Martha poet trauers, s Martha est mort, s pur ceo le bil de reuiuer doit auer prie que son heire poet trauers. Et issint primerain le diuorc ne longe cōe ceo remaine in force ia le droit. Secondm̄t le nient trouer dun office disable le pl̄ a trauerier loffice. Et darreinment bil de reuiuer sur reuiuer come cest case est nient maintenable.

FINIS.

Caſuum iſtius libri ſeries.

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